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ABSTRACT

The Education Amendments of 1978, Part B of the Elementary Secondary Education Act Title IX were implemented because of the growing concern about illiteracy, test score decline, and educational accountability. They establish funds and technical assistance to state and local education agencies for program implementation and test development. Both House and Senate Reports stressed that the federal government is not to specify minimum standards, nor require certain tests: nor is the receipt of aid to be conditional on adopting minimum standards. A bill introduced by Representative Robert Mottl, requiring states to establish minimum standards was defeated. (The House and Senate committee reports, the Mottl bills, Federal Register regulations, and excerpts from regional hearings are appended.) (CP)

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STATE MINIMUM COMPETENCY TESTING PROGRAMS:

REVIEW AND RESOURCES

FEDERAL EFFORTS IN MINIMUM COMPETENCY TESTING

FOR

THE NATIONAL INSTITUTE OF EDUCATION

FINAL REPORT
NIE-G-79-0033
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LEGISLATIVE HISTORY, Part B, Title IX, ESEA

Following the history of the development of legislation as it is introduced and finds its way to congressional favor, many times in a strangely convoluted form, is like entering a labyrinth at the exit and finding one's way to the starting point -- there are many intriguing byways one would like to explore. However, we shall attempt to penetrate straight to the heart of the matter following the straight and narrow, or in any event, narrow path from idea to legislative daylight.

The following sections describe the introduction and progress of both the Senate and House versions of the extension of ESEA largely in sequential order and the effort of one Congressman to mandate an educational proficiency test on the part of the states as a condition of receiving federal funds under ESEA.

On January 4, 1977, Representative Carl Perkins (D-Kentucky) introduced H.R. 15, "a bill to extend for five years certain elementary, secondary, and other education programs." It was referred to the Committee on Education and Labor. It emerged over one year and four months later on May 11, 1978, having undergone numerous hearings, rewrites and amendments. On June 24, 1977, Senator Claiborne Pell (D-RI) introduced S. 1753 which was a "bill to extend the Elementary and Secondary Education Act of 1965 and for other purposes." On May 15, 1978, the Senate bill, after many hearings and amendments, was reported out of committee (the Committee on Human Resources). Both the Senate bill and the House bill as reported to the committee as a whole in the respective houses, constituted extensive amendments to the bills as originally introduced.

The Senate Version

In the Senate, S. 1753 was introduced as a straight five-year extension of existing programs for elementary and secondary education. The bill was subject to six days of hearings by the Subcommittee on Education, Arts and Humanities between October 4 and November 4, 1977. In addition, the subcommittee held three days of hearings on the general issue of quality of existing elementary and secondary education and a related issue of competency-based testing and basic skills. On March 8, 1978, the subcommittee heard testimony from the Secretary of Health, Education and Welfare concerning the administration's proposal for elementary and secondary education programs. The committee amendment as reported out was based on the testimony received in those hearings plus the extensive written testimony received from witnesses who were not able to be heard during the subcommittee hearings.

The subject of educational proficiency standards emerged as Part B of Title II of the Senate Bill. Under Section 221 of Part B of Title II the Commissioner was authorized to make grants to any state educational

agency (or to any local educational agency located in the state in which the state educational agency did not submit an application for a grant under the section) to carry out any plan approved by the commissioner in accordance with this section to assist students in achieving levels of educational proficiency compatible with basic standards established by such educational agency. The applicants were to submit applications to the Commissioner of Education in accordance to such rules and procedures as Commissioner should require. Elements of the proficiency plan submitted by the state were to contain (1) a description of the educational proficiency standards established by the applicant for reading, writing, mathematics and any other subject for which the Commissioner might require such standards, (2) a description of the programs designed to assist students in achieving proficiency, (3) provisions for administration of the examinations to students at specified intervals or grade levels to measure their reading, writing or mathematical proficiency or other subjects which the applicant might consider appropriate for testing and for assurances that any student who fails any examination shall be offered supplementary instruction in the subject matter covered by such examination. This element was permissive, not mandatory. The Commissioner was authorized to award a grant to any applicants provided that the Commissioner approved the educational proficiency plan and the application submitted was pursuant to all other requirements as might be established by the Commissioner. Grants could be awarded under this section to implement educational proficiency plans including the provision of supplementary instruction which must be provided to students who fail the examinations. This bill further provided in Section 221 (d) that, "Nothing in this section shall authorize the Commissioner to impose tests on state educational agencies or local educational agencies . . ."

Section 222 of the Senate Bill related to achievement testing assistance. Under this section the Commissioner was authorized through grants or contracts awarded to state and local educational agencies and other public and private nonprofit agencies, organizations and institutions to assist state and local educational agencies to develop their capacity to conduct programs of testing the achievement in the basic skills of children in elementary and secondary schools. This section also included a list of approvable activities which included (1) disseminating information to state and local education agencies on the availability and uses of achievement tests, (2) training of an assistant to administrators, teachers and other instructional personnel in the use of tests and test results, and (3) research and evaluation to determine improved means of assessing more accurately the achievement of children.

The Committee Report

The Committee Report accompanying the bill delineated the committee's feelings on the necessity of providing for such a program. The committee found from both oral and written testimony that declines in

standardized test scores, findings of illiteracy among high school graduates and recent suits against school systems for educational malpractice have led some students, parents and the general public to question the value of the high school diploma. The committee cited evidence from the National Assessment of Educational Progress that 13 percent of 17-year-olds are functionally illiterate and that writing skills of the same age group declined in quality between 1970 and 1974. They also heard testimony that average test scores on the Scholastic Aptitude Test and other standardized tests have been steadily declining for over a decade. Other testimony before the committee revealed that colleges and prospective employers were becoming concerned about poor skills of some recent high school graduates. It also found that the Navy was having difficulty finding recruits who read well enough to do their jobs and was requiring many recruits to enroll in remedial courses to raise their reading ability to the 6th grade level. The committee report also recounted the progress being made by states in the instituting of minimum competency testing programs. The committee, however, made the point that the proper role of the federal government in this area was a very limited one. The federal role should be one, "merely of focusing attention on certain problems and neglected populations." Feeling that the testimony they had heard revealed that there were some problems in the basic skills areas and that those students who were functionally illiterate constituted a neglected population, the committee felt justified in proposing a new program of aid to the states to assist them in developing minimum competency standards. The report, however, specified that the federal government is not to set certain minimum standards which the states must use nor is the federal government to require that certain tests must be used nor is the receipt of federal aid to be conditioned on adopting minimum standards of competency. The federal role was to be limited to one of providing financial assistance to the states to encourage their own efforts in this area. The committee report was very specific in terms of state vs. federal authority. It specifically explained, " . . .the Federal Government is not to specify certain minimum standards which the states must use, nor is the Federal Government to require that certain tests must be used, nor is the receipt of Federal aid (except for this assistance) to be conditioned on adopting minimum standards of competency." The committee report specifically pointed out that the programs under Part A of Title II (basic skills) were to be administered by the Secretary of Health, Education and Welfare, whereas, the programs under Part B (minimum proficiency standards) were to be administered by the Commissioner of Education.

The House Version

Meanwhile, in the House on May 11, 1978, the Committee on Education and Labor of the U.S. House of Representatives submitted a report on H.R. 15 together with the bill to the committee as a whole. The report in the house emphasized exactly the same evidence that was emphasized in

the report of the committee in the Senate. While the educational proficiency section in the Senate was Part B of Title II, in the House version, educational proficiency became Title VIII. The House report also emphasized the limited role of the federal government. In fact, although the reports are arranged somewhat differently, exactly the same wording is used in both reports.

Attempts at Mandatory Provisions in the House

Despite the emphasis in both reports on the fact that education was a state and local responsibility and the role of the federal government was to provide assistance to the states in their efforts toward achieving minimum competency testing programs, there were other activities going on that would have mandated national standards. Representative Ronald M. Mottl (D-Member of Congress from the 23rd district of Ohio) introduced two identical bills, H.R. 6088 and H.R. 7116 in April of 1977. The extent to which the philosophy of this bill was opposed to the philosophy expressed in the reports, in both the House and Senate is reflected in the title of the bill and in the various provisions. As introduced this was a bill, "To amend the Elementary and Secondary Education Act of 1965 to require state educational agencies to establish basic standards of education proficiency applicable to secondary students." (Emphasis supplied). It provided that Title VIII of the Elementary and Secondary Act of 1965 be amended to add at the end thereof a new section entitled Basic Educational Standards.

Section 813 (a), (1) provided that no application made by a state educational agency for assistance under this act (the entire Elementary and Secondary Education Act) may be considered unless the agency making such an application provided assurances that the state educational agency would establish and implement basic standards of educational proficiency in accordance with the plan the agency approved under a future subsection, or in accordance with the applicable federal standards. (Emphasis supplied). It further provided that such standards should include the administration of reading, writing and mathematics proficiency examination to each student enrolled in the secondary schools in the state. Clearly, the intent was to force states into a minimum competency testing program, and further to put the federal government squarely into the business of setting standards. Subsection (a), (2) further provided a specific time during which the examination was to be given. It provided that the examination should be administered to students during the academic year preceding the academic year during which the student completed the requirements necessary for graduation (essentially the 11th grade). It further provided that if the student failed to pass the examination, he be given an opportunity to take the examination during the following year. Presumably, states could give examinations at other points in a student's school career, since they were not specifically prohibited from doing so, but were mandated to give it

during the 11th grade. Subsection (a), (3) clearly intruded into the prerogatives of the local school districts by specifying that passing the test should be a requirement for graduating from high school, and specifically prohibiting a local educational agency from certifying that graduation of any student who did not achieve a passing grade in the examination. Section (a), (4) provided that the test should be designed to test proficiency in writing skills, reading and comprehension and mathematics skills and comprehension. It further provided that such an examination should emphasize testing the ability of the student to use and understand language, and to read with facility and understanding.

Section (b) further established the intent of the author of the bill to substitute federal standards for state and local standards.

Subsection (b) (1) provided for the establishment of commission to be known as the National Commission on Basic Education

Subsection (b) (2) and (3) estalish the composition of the commission and the method of payment.

Subsection (b) (4) provided for the functions of the commission. Under these provisions the Commission was mandated to establish basic standards of educational proficiency, "designed to evaluate the reading, writing and mathematics skills of secondary school students." It further provided that the commission review plans submitted by state educational agencies for the establishment of standards in conformity with the basic standards established by the commission under the previous paragraph. It further provided that the commission was to determine whether to approve plans submitted by the state education agencies under that paragraph. Subsection (c) provided that in cases in which the commission disapproved the plans submitted by state educational agencies, the basic standards established by the commission, "shall be placed in effect in the state involved if such state desires to receive assistance under this act." (Emphasis supplied).

The provisions of this bill were clear usurpation of the responsibilities of state and local educational agencies, and were clearly opposed to the final thinking of the committee as it submitted its report.

Following hearings on these two bills in September 1977, and after much adverse testimony was heard, Representative Mottl introduced a third bill, H.R. 9574. This was entitled "A bill to amend the Elementary and Secondary Education Act of 1965 to provide assistance for the establishment of basic standards of educational proficiency applicable to public school students." The very title as opposed to the title H.R. 6088 gives a hint to the change in thinking of the author following the hearings on his first two bills. Whereas the title of H.R. 6088 required state educational agencies to establish basic standards of education proficiency, the Title of H.R. 9574 was considerably softened, so

that the federal government would be providing assistance for the establishment of basic standards of educational proficiency. As will be seen, the provisions of this bill modified greatly the provisions of H.R. 6088 in order to meet the objections of state and local education officials. As was the case with H.R. 6088, H.R. 9574 would amend Title VIII of the Elementary and Secondary Act by adding a new section entitled "Basic Educational Standards." The bill provided that a state education agency, or a local education agency in the case of any agency being located in a state which did not participate in the program, could receive financial assistance by submitting an application which would provide assurances that the agency would establish and implement basic standards of educational proficiency in accordance with its own plan to be approved under Section (b) (4). These standards however, were mandated to include the administration of proficiency examinations which primarily measured the proficiency in reading, writing and mathematics of each student enrolled in the public schools in the state or school district involved. Subsection (a) (2) mandated, however, that the examinations should be administered to students at the beginning of the academic year at the 6th, 8th, 10th and 12th grade levels. Thus, even in this bill, states or school districts would not be mandated to set educational proficiency standards, but if they chose to do so, and chose to receive financial assistance from the federal specifications. Other provisions of this section specified that a passing grade in any such examination shall not be a requirement necessary for advancement in grade level or for graduation. It further specified that any student who fails such an examination shall be provided with "an opportunity to participate in a remedial program in the subject matter covered by the examination." As will be seen, some of this language survived in the bill as submitted by the Committee on Education and Labor.

Representative Mottl, however, did not give up his idea of establishing a National Commission on Basic Education. Subsection (b) provided for the establishment of the commission, its composition and its powers. These powers, however, were considerably modified from the powers expressed in H.R. 6088. Subsection (4) Paragraph (a) mandated the commission to establish a series of standards of educational proficiency, including tests to measure such proficiency, in the areas of reading, writing and mathematics skills, and further specified that these be developed at 6th, 8th, 10th and 12th grade levels. It did not, however, provide that such standards be substituted for state standards where the state had no such standards or where the state did not submit standards in conformity with the standards developed by the commission. It merely provided that the commission was to make these tests and standards available to any state or local agencies which requested such in connection with an application for assistance from federal government. The commission was still mandated to review applications for assistance under this section and compare them with the standards developed by the commission. Paragraph (C) provided that such applications and plans would be approved if the commission determined that the standards to be established by the state or local educational agency bore a reasonable (emphasis supplied) relation to educational proficiency needs of

students at the various levels measured. Subsection (C) (1) further provided that in any school districts that did not establish standards on educational proficiency or administer proficiency examinations, the commissioner of education was mandated to carry out a program of making such examinations directly available to any student attending public schools upon the request of any parent of such student.

Resolution of the Conflict

It is obvious that from the foregoing that not all of the sentiment in Congress was in favor of the concept of primacy of state and local governments in education but that at least a small segment felt the situation was serious enough to warrant rather massive federal intervention in the education process. Although the testimony offered was overwhelmingly in favor of a permissive type of legislation, some testimony was offered in favor of mandatory legislation. The outstanding proponent of this type of legislation was Admiral Rickover who, in his testimony, felt that there should be a federal test to test the attainment of federally developed standards. However, the content of the bills as finally approved by Congress gives testimony to the fact that Congress believes that education is still a matter for state and local governments and that the federal role should be one of providing assistance to the states.

The Conference Report

Because of the differences in the Senate Bill and House Bill, as passed by these respective Houses, a conference committee was appointed. As a result of the conference, the programs to develop minimum proficiency standards and to assist in achievement testing became Part B of Title IX of the Elementary and Secondary Education Act. There were five main differences in the Senate and House Bills regarding proficiency testing, two under Section 921 and three under Section 922. The House Bill would have required an applicant for funds under the new Minimum Proficiency Program to establish proficiency standards for reading, writing, mathematics and any other subject for which the state might require standards. The Senate Amendment, however, required the establishment of standards for the basic skills and other subjects which the Commissioner might require. The Senate receded from its position and the House version prevailed thus reflecting the primacy of state government. In the House Bill, funds were authorized to be used for continuing presently existing educational proficiency plans, while the Senate amendment did not. The Senate receded from its position thus allowing assistance to be granted to those states that had already initiated minimum competency testing programs. Under Section 922, the House vested authority for the program in the Secretary of Health, Education and Welfare, while the Senate amendment vested authority in the Commissioner

of Education. The House receded from its position and the authority was vested in the office of the Commissioner of Education. In the House Bill, but not the Senate amendment, grants were limited to private agencies or organizations which were nonprofit. The House receded from its position. Finally, the House Bill, but not the Senate Amendment, stated that nothing in the new section could be construed to authorize the secretary to develop specific tests or test questions. The Senate receded from its position, but included an amendment forbidding the secretary from requiring the use of specific tests or test questions and permitting any state or local education agency to refuse to use any such tests or test question.

The conference report was approved by both Houses on October 14, 1978, and in November was signed into law by President Carter.

As will be seen in the following section, proposed rules have been published and regional hearings have been held regarding them. A copy of the proposed rules as well as the law itself is included in the appendix. However, this program was not funded despite last minute efforts by Representative Mottl to amend the appropriations bill. For the 1979-80 fiscal year, a $2 million appropriation was requested by the administration for Sec. 922, but the Congress did not see fit to acquiesce and no appropriation was made for Title IX, Part B. Therefore, the program is dormant and no responsibility for its administration has been assigned in the Office of Education. If it is funded in the future, Office of Education officials have indicated that it will be assigned to the National Basic Skills Program Office, which is administering Title II of ESEA.

ANALYSIS OF FEDERAL LEGISLATION AFFECTING
MINIMUM COMPETENCY TESTING

Introduction:

The question of analyzing the federal impact on the states of Title IX might seem to be moot under the present circumstances. For the second year in a row, the conference reports of the appropriations committees of the Senate and the House neglect completely to fund efforts under Title IX. However, for two reasons an analysis of Part B of Title IX would be in order.

One, future sessions of Congress may well appropriate money for this purpose, particularly as minimum competency testing programs in the states reach the implementation stage and assistance may well be needed for more forward-looking planning on the part of the states and for technical assistance in the development of test instruments. Section 921 would provide assistance to the states in their planning efforts and Section 922 would provide assistance in developing appropriate testing instruments.

Two, an analysis of the legislation and the proposed regulations might well provide the basis for future amendments to Part B of Title IX. The passage of Title IX, Part B, signaled the entrance of the federal government into a field that had been initiated and dominated by state efforts. Unlike Title I, ESEA, which was federally initiated in an area neglected by states, Part B of Title IX is an attempt to influence the direction of ongoing state initiatives. Consequently, its impact may be beneficial or deleterious to state efforts.

The Impact of Title IX on State Programs

Since education has long been acknowledged to be the function primarily of the states rather than of the federal government, any federal legislation in the area of education will have some impact on the states. This has been true since the passage of the Northwest Ordinance. Most frequently, the impact of federal legislation on the states is of a beneficial nature. However, some examples exist in which the impact is deleterious to the state in terms of causing changes in already existing programs. Certainly Title IX has the potential of having this sort of effect since 38 states at the present time already have some kind of minimum competency testing program in effect or planned. There are two general types of impact -- policy and fiscal. These two are not mutually exclusive in any particular piece of legislation but examples can be found where one is primary and the other is secondary. For instance, Public Law 94-142, dealing with the handicapped, has primarily a policy effect at the present time. Exemplary of this is the requirement for

IEPs which causes a change in policy on the part of the states and only secondarily has a fiscal impact. An example of a primarily fiscal impacting piece of legislation is Public Law 875 (impact aid) in that it channels money directly to local school districts within a state but has a secondary policy impact because of the requirement that impact aid not be counted as local resources. This has had a policy impact on states in their attempts to accomplish school finance reform and equalization.

There are two sources of impact on the states -- the legislation itself and the regulations devised to administer the legislation. States frequently complain that the regulations are more restrictive than the legislation. Since federal officials responsible for developing regulations to implement legislation frequently peruse the records of legislative hearings, committee reports and conference reports it is valuable to examine the committee reports.

Excerpts from the Committee Reports

Part B of the new Title II (now Part B of Title IX) establishes a program in educational proficiency standards. This will be a program of grants to implement educational proficiency standards and of technical assistance to develop achievement tests. The issues of standards and tests are highly charged and generate a great deal of discussion in education circles through the country.

Minimum competency testing, assessing the extent to which students have mastered the basic academic skills needed in our society, has become a prominent issue in education today. Declines in standardized test scores, findings of illiteracy among high school graduates, and recent suits against school systems for "educational malpractice" have all led some students, parents and the general public to question the value of a high school diploma.

The National Assessment of Educational Progress, for instance, found that 13 percent of 17-year-olds are functionally illiterate and that writing skills of the same age group declined in quality between 1970 and 1974. Average scores on the SAT's and other standardized tests have been steadily declining for over a decade.

Testimony before the Committee revealed that colleges and prospective employers are becoming concerned about the poor skills of some recent high school graduates. One university reported that 25 percent of its incoming freshmen must take remedial courses in basic subjects in order to prepare them for college-level work. The president of another university who also teaches a course testified that his students are woefully behind their predecessors of ten years ago in their ability to spell, use proper grammar and express themselves clearly in writing.

Similarly, the Navy is having difficulty finding recruits who read well enough to do their jobs and is requiring many recruits to enroll in remedial courses to raise their reading ability to the sixth grade level.

In response to such alarming trends as these, and out of a desire to make a high school diploma mean more than merely being a record of attendance, a number of states and local districts have turned to minimum competency, or educational proficiency testing. Under such a system, students are tested at various points in their educational careers to determine whether they have mastered some basic competencies appropriate to their grade level. At the heart of most of these programs is remediation for those who do not pass the required minimum level of competency.

At last count five states had operational competency-based testing and 29 more were involved in some form of performance-based educational activities in the basic skills. In some cases, adoption of such standards has uncovered an alarming rate of deficiencies in the basic skills. For example, Florida instituted a competency-based testing program this school year and found that while only 11 percent of the 11th graders tested scored below passing in reading and writing skills, 36 percent failed the mathematics portion.

The Committee feels all of these recent developments should be of concern to the federal government. The federal government spends billions of dollars every year for programs to provide special services to various types of children to improve access to educational opportunity, and to help districts explore new initiatives in education. If the basic educational program is not providing some of the nation's school children with the skills necessary to survive in society, then this should be made known and the system adjusted accordingly.

However, the Committee also feels that the proper role of the federal government in this area is a very limited one. States and local school districts have the basic responsibility to provide education and the federal role is merely one of focusing attention on certain problems and neglected populations.

In this vein, the Committee has proposed a new program of aid to the states to assist them in developing minimum competency standards. But the intention is clear: the federal government is not to specify certain minimum standards which the states must use, nor is the federal government to require that certain tests must be used, nor is the receipt of federal aid (except for this assistance) to be conditioned on adopting minimum standards of competency. The federal role is merely one of providing financial assistance to the states to encourage their own efforts in this area.

The committee bill also authorized the Commissioner of Education to

provide technical assistance to state and local educational agencies and other public and private nonprofit agencies, organizations, and institutions to enable state and local educational agencies to develop their capacity to conduct programs for testing the basic skills achievement of children in their schools.

The Conference Report

It is very clear from the committee reports that Congress intends only a very limited role for the federal government, restricting it to one of focusing attention on certain problems and neglected populations. Definitely, the federal government is prohibited from specifying the standards adopted by the states and requiring that certain tests must be used. The federal role is to provide financial assistance to the states. The joint conference report further illuminates the intended limited role of the federal government. The conference report was discussed in the legislative history section of this paper.

Impact of the Law and Regulations

As is generally the case and indeed, from the very nature of the process, the proposed regulations for Part B of Title IX promised to be more restrictive and detailed than is the legislation. That the commissioner has the authority to be fairly prescriptive in terms of the format of the application and the elements of the educational proficiency plan submitted by a state is confirmed by two parts of the law. Part B, Section 921(a) states:

> The commissioner is authorized to make grants to any state educational agency (or to local educational agency located in a state in which the state educational agency has not submitted an application for grant under this section) to carry out any plan approved by the commissioner (emphasis supplied) in accordance with this section to assist students in achieving levels of educational proficiency compatible with basic standards established by such educational agencies.

Section 921(c) states:

> The commissioner shall award a grant to any applicant, in such amounts as the commissioner considers appropriate, only if (1) the commissioner approves the educational proficiency plan submitted by the applicant pursuant to subsection (b) of this section, and (2) the application submitted pursuant to such subsection satisfies all other requirements established by the commissioner.

The commissioner in the proposed regulation, under the authority granted him under the law, has chosen to add a number of other requirements. Section 162.310 of the rules in which the commissioner describes the

elements to be required in a state's application for funds. These are; (a) describe the proficiency standards being established in basic skills and in other proposed subjects, (b) describe instructional projects designed to assist students in reaching the proficiency standards and (c) assure that additional instructional assistance is provided to students who fail the proficiency standards test.

Section 162.4 of the regulations states that, "Basic Skills means reading, mathematics, and oral and written communication . . ." This could be construed to be at minor variance with the law which provides for a description ". . .of the educational proficiency standards established by the applicant for reading, writing, mathematics, and any other subject for which the state may require such standards." Clearly, both the legislation and the rules specify the minimum requirement for the skill areas to be assessed. An analysis of the requirements of each state's minimum competency testing program indicates that this would have an impact on a number of states from the standpoint of increasing or changing the skill areas to be assessed to include the subjects listed in the law and the regulations. The following states would have to make changes in their minimum competency testing program in order to become eligible to receive a grant: Arkansas, Colorado, Connecticut, Georgia, Illinois, Indiana, Maryland, Michigan, Missouri, New Jersey, New Mexico, Oklahoma and Tennessee. This element would have a policy impact primarily and a fiscal impact secondarily. Element B of the requirements is consistent with the legislation and would have minimal impact on states except that they would have to include a description of their programs designed to assist students. These are generally not now included in either state legislation or state board of education regulations. Element C would have a fairly large policy impact and an equally large fiscal impact on the states since it implies the assurances that remediation will be supplied. States that do not presently have remediation requirements in their legislation or regulations are: Arizona, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Tennessee, Utah, Virginia, Washington and Wyoming. This is not to indicate that school districts in these states are indeed not providing remediation, only to indicate that remediation is not presently provided for in the state's policy. A minor deviation of the rules from the legislation involves the substitution of the words "additional instructional assistance" in the rules whereas the legislation reads "supplementary instruction in the subject matter covered by such examination." This point will be discussed further in the synthesis of the regional hearings.

Section 162.311 which describes the allowable activities under the achievement testing program has three elements as follows: (a) provide information to SEAs and LEAs about different measures of achievement and uses of those measures, (b) provide training for educational leaders and instructional personnel in SEAs and LEAs on different measures achievement and uses of those measures and (c) conduct research on

measuring achievement and diagnosing instructional needs. These elements are entirely consistent with the legislation. States choosing not to apply for this type of assistance would receive minimal impact from the legislation but those states who did choose to apply for funds could receive considerable impact since it would greatly strengthen the influence and activities of the state education agency and would greatly enhance the understanding of state and local education agency personnel concerning the availability and uses of achievement measures.

It would appear from the analysis that Part B would have minimal policy impact on those states that have already instituted minimum competency testing policies and some fiscal impact, again minimal, on those states that chose to apply for funds under that Part. Those states that do not presently have such programs would not be greatly tempted to adopt such a policy merely to obtain the small amount of funds that had been requested by the administration. Consequently, there would be virtually no policy or fiscal impact on those states.

Synthesis of Regional Hearings

The United States Office of Education held 10 regional hearings from May 7, 1979, through May 10, 1979, at the following sites:

Boston, Massachusetts, May 9, 1979
New York, New York, May 10, 1979
Philadelphia, Pennsylvania, May 7, 1979
Atlanta, Georgia, May 9, 1979
Chicago, Illinois, May 8, 1979
Dallas, Texas, May 7, 1979
Kansas City, Missouri, May 10, 1979
Denver, Colorado, May 9, 1979
San Francisco, California, May 8, 1979
Seattle, Washington, May 7, 1979

Subsequent to these hearings, ECS was able to obtain a transcript of the remarks and recommendations made at these meetings. Since these hearings combined recommendations regarding regulations on both Title II and Title IX of ESEA, the bulk of the testimony appeared to be on Title II. In order to analyze testimony supplied at the 10 regional hearings, the Education Commission of the States obtained from the United States Office of Education a copy of the excerpts made from transcripts of the regional hearings. These excerpts included only direct quoted testimony and none of the introductory remarks or necessary protocol. All in all, 139 pages of direct quotes were analyzed.

Of necessity, certain judgmental decisions were made in categorizing many of the remarks. In this way, some detail is lost; but, at the same time, it allows for better analysis. In the appendix are listed

comments gleaned from the transcripts of the regional hearings. Only those relating directly to Title IX, Part B have been reproduced. Other comments which might be applicable to Title II and Title IX (the hearings were on both titles) are not included. Where comments regarding both titles clearly related to Title IX, these were included in the tally of comments as discussed below.

By far the most common comment made regarded Section 162.310 (c) which provides, ". . .to assure that additional instructional assistance is provided to students who fail the proficiency standards test." Twelve objections to this provision were voiced and centered around the claim that paper and pencil tests are not the only means by which students in need of additional or supplemental aid are identified. However, an examination of the law reveals that the regulation is entirely consistent with the law. Title IX, Part B, Section 921 (d) (12) (C) says, ". . .may provide for the administration of examinations to students at specified intervals or grade levels, to measure their reading, writing, or mathematical proficiency, or their proficiency in other subjects which the applicant considers appropriate for testing; and (D) shall contain the assurance of the applicant that any student who fails any examination provided for under subparagraph (C) of this paragraph shall be offered supplementary instruction in the subject matter covered by such examination." The differences between the regulations and the law are minor in that the regulations specify additional instructional assistance while the law specifies supplementary instruction. Also, the regulations use the word "test" while the law uses the word "examination." It should be pointed out, however, that neither the law nor the regulations specify a paper and pencil test and, presumably, the lack of such specificity would allow other measures of proficiency achievement to be used, thus obviating this objection. Three other related comments related essentially to the fact that the regulations did not specify that this additional, or supplementary, instruction should be in the areas which were assessed, while the law specifically provides for this. This does not appear to be a serious objection.

The next most frequent comment (3) concerned the allowable activities as described under Section 162.311. These objections centered around the fact that the regulations did not provide that state departments of education could use funds under this part to increase their own capacity for developing and administering tests, nor did it allow the money to be used for the purpose of developing tests. An examination of the law, however, reveals that the allowable activities as described in the law do not inlcude that particular activity and, consequently, the regulations are consistent with the law. The law does state, however, in Section 922 (a) that the commissioner is authorized, either directly through grants or contracts awarded to state and local educational agencies, to assist these agencies to develop their capacity

to conduct programs of testing the ac[illegible]ent in the basic skills of children in the elementary and secondary schools.

Other comments, followed by the number of times they were mentioned, are as follows:

1) There should be more points given for the involvement of citizens in the development of the proficiency standards (2). The criteria for judging proposals are composed of two types - those found in the Education Division General Administration Regulations (EDGAR) and special criteria for each program. EDGAR constitutes 55 points of a total of 100 points thus leaving 45 points to be accumulated under the special criteria. Of those 45 points, 10 are allocated to the criterion regarding use of parents, teachers and experts in developing proficiency standards (Sec. 921 of the law) and 15 points to the same activity under achievement testing (Sec. 922 of the law). Both the criteria included in EDGAR and the special provisions are listed in the regulations to be found in the appendix.

2) Tests should be sex-fair and non-discriminatory (2). This, of course, is a valid comment about tests in general. No provision was made in the law concerning such a requirement and thus were not included in the regulations. Presumably, it could have been in the special criteria for both Secs. 921 and 922.

3) Remediation should be an allowable activity for reimbursement (2). Remediation costs were not an allowable activity in the law and thus, could not be included in the regulations. Such comments would be more appropriately addressed to amending the law rather than the regulations.

4) There should be a requirement that local school districts consult with teacher organizations or their bargaining agent regarding proficiency standards (2).

5) Section 162.311 goes beyond the law (2).

6) No evaluation provisions are made (1). Note: while no provisions for evaluation are made in the specific criteria for judging proposals, it should be noted that in EDGAR there is a provision for evaluation and that the criteria listed in EDGAR will be applied to proposals in addition to the specific criteria listed in Title IX.

7) There should be a requirement that all proposal activities should be coordinated with NIE and R&D assessment activities (1).

8) The funds should be divided equally among the states (1).

9) There should be a prohibition against states using minimum competency testing for a requirement for high school graduation (1). Clearly, this was not addressed in the law and the Commissioner would be beyond his authority in promulgating such a prohibition. If this prohibition were included in the law (and it is evident that Congressional intent was not directed toward such a prohibition) it would cause a drastic alteration in the plans of 17 states.

10) All proposals should be approved by state education agencies (1).

It would appear that the proposed regulation is consistent with the law, although it could be argued, somewhat minimally, that the regulation vests more power in the Commissioner than the legislative history would indicate Congress intended. A number of the suggestions made in the regional hearings would clearly be inconsistent with the law, i.e., the suggestion that remediation be an allowable activity for reimbursement would clearly not be authorized by the law.

APPENDIX A

COMMITTEE REPORTS

BEST COPY AVAILABLE

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 95-1137

A REPORT

ON

THE EDUCATION AMENDMENTS OF 1978, H.R. 15

TOGETHER WITH

ADDITIONAL AND SUPPLEMENTAL VIEWS

(Including cost estimate of the Congressional Budget Office)

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS

MAY 11, 1978.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

determining the distribution of funds under the Act. The Committee does not propose any amendments to that section, but it does wish to state its intent that "areas of greatest need" should be defined as including those which, within the immediately five preceding years, have had a significantly above-average influx of individuals of limited English language skills.

TITLE VIII—EDUCATIONAL PROFICIENCY

Minimum competency testing—assessing the extent to which students have mastered the basic academic skills needed in our society—has become a prominent issue in education today. Declines in standardized test scores, findings of illiteracy among high school graduates, and recent suits against school systems for "educational malpractice" have all led some students, parents, and the general public to question the value of a high school diploma.

The National Assessment of Educational Progress, for instance, found that 13 percent of 17-year olds are functionally illiterate and that writing skills of the same age group declined in quality between 1970 and 1974. Average scores on the SAT's and other standardized tests have been steadily declining for over a decade.

Testimony before the Committee revealed that colleges and prospective employers are becoming concerned about the poor skills of some recent high school graduates. One university reported that 25 percent of its incoming freshmen must take remedial courses in basic subjects in order to prepare them for college-level work. The president of another university who also teaches a course testified that his students are woefully behind their predecessors of ten years ago in their ability to spell, use proper grammar, and express themselves clearly in writing. Similarly, the Navy is having difficulty finding recruits who read well enough to do their jobs and is requiring many recruits to enroll in remedial courses to raise their reading ability to the sixth grade level.

In response to such alarming trends as these, and out of a desire to make a high school diploma mean more than merely being a record of attendance, a number of States and local districts have turned to minimum competency, or educational proficiency testing. Under such a system, students are tested at various points in their educational careers to determine whether they have mastered some basic competencies appropriate to their grade level. At the heart of most of these programs is remediation for those who do not pass the required minimum level of competency.

At last count five States had operational competency-based testing and 20 more were involved in some form of performance-based educational activities in the basic skills. In some cases, adoption of such standards has uncovered an alarming rate of deficiencies in the basic skills. For example, Florida instituted a competency-based testing program this school year and found that while only 11 percent of the 11th graders tested scored below passing in reading and writing skills, 36 percent failed the mathematics portion.

The Committee feels all of these recent developments should be of concern to the Federal government. The Federal government spends

billions of dollars every year for programs to provide special services to various types of children, to improve access to educational opportunity, and to help districts explore new initiatives in education. If the basic educational program is not providing some of the nation's school children with the skills necessary to survive in society, then this should be made known and the system adjusted accordingly.

However, the Committee also feels that the proper role of the Federal government in this area is a very limited one. States and local school districts have the basic responsibility to provide education, and the Federal role is merely one of focusing attention on certain problems and neglected populations.

In this vein, the Committee has proposed a new program of aid to the States to assist them in developing minimum competency standards. But the intention is clear: the Federal Government is not to specify certain minimum standards which the States must use, nor is the Federal government to require that certain tests must be used, nor is the receipt of Federal aid (except for this assistance) to be conditioned on adopting minimum standards of competency. The Federal role is merely one of providing financial assistance to the States to encourage their own efforts in this area.

The Committee bill also authorizes the Secretary of HEW to conduct research and evaluation on the uses of tests to measure basic skills. The Committee does not envision the Federal government imposing the results of this research and evaluation under this authority on the States as a condition to receipt of Federal funds.

TITLE IX—EMERGENCY SCHOOL AID ACT

Overview

Enacted in 1972, the Emergency School Aid Act is the major Federal program to help school districts with desegregation problems. The Act authorizes funds for three basic purposes:

—to meet the special needs incident to eliminating minority group segregation and discrimination.

—to encourage voluntary elimination, reduction or prevention of minority group isolation, and

—to help schoolchildren overcome the educational disadvantages of minority group isolation.

For fiscal years 1973–77, nearly $1.2 billion was appropriated. The fiscal year 1978 appropriation is $275.5 million.

The Act contains seven sub-programs. Three of them—basic grants (64 percent of the annual appropriation), pilot programs (15 percent), and grants to non-profit organizations (8 percent)—are distributed through a State apportionment formula based on each State's minority population. Several nationwide programs are also authorized, including special projects (5 percent), bilingual programs (4 percent), educational TV (3 percent), and evaluation (1 percent). The funds may be used for a variety of activities such as special instructional services, community activities, human relation efforts and staff development.

In 1976, new provisions were added to ESAA authorizing magnet schools, neutral site schools, pairing of schools, and remedial activities for Title I students transferred due to desegregation ("follow the

Calendar No. 787

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-856

EDUCATION AMENDMENTS OF 1978

MAY 15 (legislative day, APRIL 24), 1978.—Ordered to be printed

Mr. PELL, from the Committee on Human Resources, submitted the following

REPORT

[To accompany S. 1753]

The Committee on Human Resources, to which was referred the bill (S. 1753) to extend the Elementary and Secondary Education Act of 1965, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill as amended do pass.

BACKGROUND OF THE COMMITTEE AMENDMENT

S. 1753 was introduced on June 24, 1977. It proposed a straight 5-year extension of existing programs for elementary and secondary education which are administered within the Education Division of the Department of Health, Education, and Welfare, and served as the basis for 6 days of hearings by the Subcommittee on Education, Arts, and Humanities between October 4 and November 4, 1977. In addition, the subcommittee held 3 days of hearings on the general issue of the quality of existing elementary and secondary education and the related issue of competency-based testing and basic skills. Finally, the subcommittee, on March 8, 1978, heard testimony from the Secretary of Health, Education, and Welfare concerning the administration's proposals for amendment and extension of elementary and secondary education programs.

The committee amendment is based on the testimony received in these hearings, plus the extensive written testimony received from witnesses who were not able to be heard during the subcommittee hearings. All of the testimony is printed in volumes on the subcommittee's deliberations.

is a critical one facing American education, and it believes this new title will be a major step in combatting that problem.

The committee wishes to emphasize that grants awarded and contracts entered into under this title are to be demonstration in nature. It is hoped that those programs of proven merit will subsequently be replicated in other school districts and become an integral part of our total educational system.

The committee also wishes to emphasize that in repealing the title VII reading authority, and adopting the basic skills authority under this new title II, the committee does not intend that those programs in operation under the old authority be summarily terminated. Rather, the committee intended that those reading programs of high quality be broadened to include mathematics and oral and written communication.

The committee notes that the present program for distribution of low-cost books has been successfully operated on the basis of a sole source contract. This contract was approved under the regular administrative procedures of the Office of Education, which included a careful examination of all potential vendors before awarding a contract on a sole source basis. The committee intends that the Commissioner shall continue to follow these administrative procedures which have been developed and successfully implemented over several years to assure proper contract administration

The committee expects that a periodic review be made at appropriate intervals of the determination of a sole source contract, and based on such determination that future contracts be let on either a sole source or competitive basis.

Part B of the new title II establishes a program in educational proficiency standards. This will be a program of grants to implement educational proficiency standards and of technical assistance to develop achievement tests. The issues of standards and tests are highly charged and generate a great deal of discussion in education circles throughout the country.

Minimium competency testing—assessing the extent to which students have mastered the basic academic skills needed in our society—has become a prominent issue in education today. Declines in standardized test scores, findings of illiteracy among high school graduates, and recent suits against school systems for "educational malpractice" have all led some student, parents, and the general public to question the value of a high school diploma.

The National Assessment of Educational Progress, for instance, found that 13 percent of 17-year olds are functionally illiterate and that writing skills of the same age group declined in quality between 1970 and 1974. Average scores on the SAT's and other standardized tests have been steadily declining for over a decade.

Testimony before the Committee revealed that colleges and prospective employers are becoming concerned about the poor skills of some recent high school graduates. One university reported that 25 percent of its incoming freshmen must take remedial courses in basic subjects in order to prepare them for college-level work. The president of another university who also teaches a course testified that his students

are woefully behind their predecessors of ten years ago in their ability to spell, use proper grammar, and express themselves clearly in writing. Similarly, the Navy is having difficulty finding recruits who read well enough to do their jobs and is requiring many recruits to enroll in remedial courses to raise their reading ability to the sixth grade level.

In response to such alarming trends as these, and out of a desire to make a high school diploma mean more than merely being a record of attendance, a number of States and local districts have turned to minimum competency, or educational proficiency testing. Under such a system, students are tested at various points in their educational careers to determine whether they have mastered some basic competencies appropriate to their grade level. At the heart of most of these programs is remediation for those who do not pass the required minimum level of competency.

At last count five States had operational competency-based testing and 29 more were involved in some form of performance-based educational activities in the basic skills. In some cases, adoption of such standards has uncovered an alarming rate of deficiencies in the basic skills. For example, Florida instituted a competency-based testing program this school year and found that while only 11 percent of the 11th graders tested scored below passing in reading and writing skills, 36 percent failed the mathematics portion.

The Committee feels all of these recent developments should be of concern to the Federal government. The Federal government spends billions of dollars every year for programs to provide special services to various types of childen, to improve access to educational opportunity, and to help districts explore new initiatives in education. If the basic educational program is not providing some of the nation's school children with the skills necessary to survive in society, then this should be made known and the system adjusted accordingly.

However, the Committee also feels that the proper role of the Federal government in this area is a very limited one. States and local school districts have the basic responsibility to provide education, and the Federal role is merely one of focusing attention on certain problems and neglected populations.

In this vein, the Committee has proposed a new program of aid to the States to assist them in developing minimum competency standards. But the intention is clear: the Federal Government is not to specify certain minimum standards which the States must use, nor is the Federal government to require that certain tests must be used, nor is the receipt of Federal aid (except for this assistance) to be conditioned on adopting minimum standards of competency. The Federal role is merely one of providing financial assistance to the States to encourage their own efforts in this area.

The committee bill also authorizes the Commissioner of Education to provide technical assistance to State and local educational agencies and other public and private nonprofit agencies, organizations, and institutions to enable State and local educational agencies to develop their capacity to conduct programs for testing the basic skills achievement of children in their schools.

The committee wishes to point out the programs under part A of this new title II are to be administered by the Secretary of Health, Education, and Welfare, whereas programs under part B are to be administered by the Commissioner of Education.

SECTION 103.—SPECIAL PROJECTS

Section 103 of the Committee bill creates a new title III to the Elementary and Secondary Education Act and is so doing constitutes a comprehensive recasting of the Special Projects Act established in the Education Amendments of 1974. The new Special Projects title of the Elementary and Secondary Education Act emphasizes both national education priorities and special or unique education needs that are of particular concern to the committee.

Section 103 contains three existing programs that are carried over from the old Special Projects Act: Metric Education, Arts in Education, and Consumer Education. One program, environmental education, currently operates outside the framework of the Special Projects Act, but it is incorporated as an integral part of section 103. There are six entirely new programs: law-related education, correction education, youth employment, population education, health education, and biomedical sciences education.

The committee recognizes that the programs provided for in section 103 do not constitute the entire range of education priorities and special education needs that may merit Federal assistance. Accordingly, the committee in part A establishes a discretionary fund to enable the Commissioner of Education to undertake projects through grants or contracts that are consistent with the general purpose of section 103 but may not be covered in the 10 programs delineated in this section of the committee bill.

The Commissioner is also authorized to make grants in an amount not to exceed $25,000 to teachers, administrators, other educational personnel, and parent organizations. This provision is intended to insure that those who work with students on a daily basis—in-school educators and parents—are given the opportunity to participate in the formulation and implementation of programs to help solve our nation's education problems.

The committee further believes that section 103 is intended to promote Special projects not only through the immediate benefits of funded projects but also by stimulating through such projects the use of other Office of Education funds for the 10 programs in this section of the committee bill. For example, the programs in section 103 should fund the development or evaluation of exemplary projects to prepare them for validation and dissemination. The projects might then be supported as developer-demonstrator projects with separate funds appropriated for the National Diffusion Network.

Part B of section 103.—Metric education

The United States remains the only industrialized nation in the world not to use the metric system on a nationwide basis. In the near future, however, our nation will make a complete changeover to the metric system. While valuable Metric Education programs have been initiated over the past 4 years, the committee believes there is a defi-

fiscal year 1980, $11,000,000 for fiscal year 1981, and $12,000,000 for each of the two succeeding fiscal years. Under such conditions as the Commissioner determines to be appropriate, not to exceed 10 per centum of the amounts appropriated for each fiscal year shall be available for a contract from the Commissioner to the contractor designated under subsection (a) of this section for technical assistance under subsection (b)(3) of this section to carry out the provisions of such section.

"SPECIAL MATHEMATICS PROGRAM

"SEC. 215. (a) The Commissioner is authorized to make grants to, and enter into contracts with, one or more private nonprofit agencies, institutions, or organizations, for the conduct, in cooperation with one or more local educational agencies, of special programs for the teaching of standard mathematics to children eligible for services under this Act through instruction in advanced mathematics by qualified instructors with bachelor's degrees in mathematics, or the mathematical sciences, from colleges or other institutions of higher education, or equivalent experience.

"(b) There are authorized to be appropriated such sums for fiscal year 1979 and for each of the four succeeding fiscal years, to carry out the provisions of this section.

"PART B—EDUCATIONAL PROFICIENCY STANDARDS

"GRANTS TO IMPLEMENT EDUCATIONAL PROFICIENCY STANDARDS

"SEC. 221. (a) The Commissioner is authorized to make grants to any State educational agency (or to any local educational agency located in a State in which the State educational agency has not submitted an application for a grant under this section) to carry out any plan approved by the Commissioner in accordance with this section to assist students in achieving levels of educational proficiency compatible with basic standards established by such educational agency.

"(b)(1) Each applicant which desires to receive a grant under this section may submit an application to the Commissioner. Any such application shall be submitted in such form, and in accordance with such procedures, as the Commissioner shall require and shall contain an educational proficiency plan, as described in paragraph (2) of this subsection.

"(2) The educational proficiency plan referred to in paragraph (1) of this subsection—

"(A) shall contain a description of the educational proficiency standards established by the applicant for reading, writing, mathematics, and any other subject for which the Commissioner may require such standards;

"(B) shall contain a description of the programs designed to assist students in achieving levels of educational proficiency compatible with the standards described in subparagraph (A) of this paragraph;

"(C) may provide for the administration of examinations to students, at specified intervals or grade levels, to measure their reading, writing or mathematical proficiency, or their proficiency

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 95-1753

EDUCATION AMENDMENTS OF 1978

OCTOBER 10, 1978.—Ordered to be printed

Mr. PERKINS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 15]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15) to extend and amend expiring elementary and secondary education programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Education Amendments of 1978".

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TITLE I—AMENDMENT TO TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

Sec. 101. Special educational programs and projects for educationally deprived children.

"TITLE I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN

"Sec. 101. Declaration of policy.
"Sec. 102. Duration of assistance.

"PART A—PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

"Subpart 1—Basic Grants

"Sec. 111. Grants—Amount and eligibility.
"Sec. 112. Treatment of earnings for purposes of aid to families with dependent children.

33-007

under section 905(a)(4), the research, evaluation and related activities under section 905(a)(6), and programs and projects involving the participation of students in for nonprofit private elementary and secondary schools shall be 100 per centum.

"PART B—EDUCATIONAL PROFICIENCY STANDARDS

"GRANTS TO IMPLEMENT EDUCATIONAL PROFICIENCY STANDARDS

"SEC. 921. (a) *The Commissioner is authorized to make grants to any State educational agency (or to any local educational agency located in a State in which the State educational agency has not submitted an application for a grant under this section) to carry out any plan approved by the Commissioner in accordance with this section to assist students in achieving levels of educational proficiency compatible with basic standards established by such educational agency.*

"(b)(1) *Each applicant which desires to receive a grant under this section may submit an application to the Commissioner. Any such application shall be submitted in such form, and in accordance with such procedures, as the Commissioner shall require and shall contain an educational proficiency plan, as described in paragraph (2) of this subsection.*

"(2) *The educational proficiency plan referred to in paragraph (1) of this subsection—*

"(A) *shall contain a description of the educational proficiency standards established by the applicant for reading, writing, mathematics, and any other subject for which the State may require such standards;*

"(B) *shall contain a description of the programs designed to assist students in achieving levels of educational proficiency compatible with the standards described in subparagraph (A) of this paragraph;*

"(C) *may provide for the administration of examinations to students, at specified intervals or grade levels, to measure their reading, writing, or mathematical proficiency, or their proficiency in other subjects which the applicant considers appropriate for testing; and*

"(D) *shall contain the assurances of the applicant that any student who fails any examination provided for under subparagraph (C) of this paragraph shall be offered supplementary instruction in the subject matter covered by such examination.*

"(c) *The Commissioner shall award a grant to any applicant, in such amounts as the Commissioner considers appropriate, only if (1) the Commissioner approves the educational proficiency plan submitted by the applicant pursuant to subsection (b) of this section, and (2) the application submitted pursuant to such subsection satisfies all other requirements established by the Commissioner. Grants awarded under this section may be used by applicants either to continue to implement their ongoing educational proficiency plans, or to implement new plans, including the provision of supplementary instruction to be provided to students who fail the examinations.*

"(d) There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years.

"(e) For purposes of this section, the term 'applicant' means any State or local educational agency which submits an application under this section.

"(f) Nothing in this section shall authorize the Commissioner to impose tests on State educational agencies or local educational agencies, and no such agency shall be compelled in any way to apply for funds under this section.

"ACHIEVEMENT TESTING ASSISTANCE

"SEC. 922. (a) The Commissioner is authorized, either directly or through grants or contracts awarded to State and local educational agencies and other public agencies, organizations, and institutions, and through contracts with private agencies, organizations, and institutions, to assist State and local educational agencies to develop their capacity to conduct programs of testing the achievement in the basic skills of children in elementary and secondary schools. The activities which may be supported under this section include—

"(1) disseminating information to State and local educational agencies on the availability and uses of achievement tests;

"(2) training of and assistance to administrators, teachers, and other instructional personnel in the use of tests and test results; and

"(3) research and evaluation designed to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs.

"(b) Nothing in this secton shall authorize the Commissioner to require specific tests or test questions. Any State or local educational agency may refuse to use any test or test question developed under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section for fiscal year 1980, any for each of the three succeeding fiscal years.

"PART C—WOMEN'S EDUCATIONAL EQUITY

"SHORT TITLE; PURPOSE

"SEC. 931. (a) This part may be cited as the 'Women's Educational Equity Act of 1978'.

"(b) (1) The Congress finds and declares that educational programs in the United States, as presently conducted, are frequently inequitable as such programs relate to women and frequently limit the full participation of all individuals in American society.

"(2) It is the purpose of this part to provide educational equity for women in the United States and to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Education Amendments of 1972.

in bilingual education. The Assistant Secretary for Education shall coordinate activities of NIE, the Office of Bilingual Education, the National Center for Education Statistics, and other appropriate agencies, to develop a national research program for bilingual education. Under the Senate amendment, the Commissioner and the Director of NIE shall periodically consult with representatives of State and local educational agencies and appropriate groups and organizations. The Assistant Secretary shall publish and disseminate all requests for proposals for research and development assisted under the act.

The House recedes.

22. Emergency school aid bilingual programs

The House bill, but not the Senate amendment, transfers to the Bilingual Education Act the program of bilingual education which is presently authorized under the Emergency School Aid Act. A separate authorization of appropriations of $10 million for fiscal 1979, $15 million for fiscal 1980, $20 million for fiscal 1981, $25 million for fiscal 1982, and $30 million for fiscal 1983 is created for this program. The Senate amendment continues the program as part of the Emergency School Aid program.

The Senate recedes with an amendment deleting the authorization for fiscal 1979. The conferees wish to state that this program is being transferred from the office within OE responsible for the Emergency School Aid Act to the office responsible for the Bilingual Education Act because there was no coordination between those two offices in funding programs even though such coordination was required by law. The conferees therefore believe that this program more properly should be administered by the Office of Bilingual Education.

ADDITIONAL PROGRAMS

1. Minimum proficiency standards

(a) The House bill requires an applicant for funds under the new minimum proficiency program to establish proficiency standards for reading, writing, mathematics and any other subject for which the State requires standards. The Senate amendment requires the establishment of standards for the basic skills and other subjects which the Commissioner may require.

The Senate recedes.

(b) The House bill, but not the Senate amendment, permits funds to be used for continuing ongoing educational proficiency plans.

The Senate recedes.

2. Achievement testing

(a) The House bill vests authority for the program in the Secretary of HEW. The Senate amendment vests authority in the Commissioner of Education.

The House recedes.

(b) The House bill, but not the Senate amendment, limits grants to private agencies or organizations which are nonprofit.

The House recedes.

(c) The House bill, but not the Senate amendment, states that nothing in this new section shall authorize the Secretary to develop specific tests or test questions.

The Senate recedes with an amendment forbidding the Secretary from requiring the use of specific tests or test questions and permitting any State or local education agency to refuse to use any such test or test question.

3. Waiver for outlying jurisdictions

The House bill, but not the Senate amendment, authorizes the Commissioner to waive any requirement of the Elementary and Secondary Education Act for Puerto Rico and the outlying areas if he determines that compliance with any such requirement is impractical or inappropriate due to the particular circumstances of any such jurisdictions. At least 30 days prior to approving any waiver, notice must be published in the Federal Register; and the granting of any such waiver is subject to such conditions as the Commissioner deems necessary to carry out the purpose of the act, including submission of a plan for the management of the funds.

The Senate recedes with an amendment limiting any such waiver for Puerto Rico to activities carried out under title I of ESEA and forbidding the granting of any such waiver to Puerto Rico or the applicability of any such waiver after July 1, 1980.

4. Funding authority

The House bill, but not the Senate amendment, requires that no provision of ESEA can be deemed to authorize entering into contracts or making payments except to such extent as appropriations are provided in advance.

The House recedes.

5. Adult education

(a) The House bill, but not the Senate amendment, permits grants to be made to agencies other than educational agencies only on condition that the duly constituted educational agency concurs.

The Senate recedes with an amendment requiring consultation and not concurrence.

(b) The House bill, but not the Senate amendment, continues the provision of existing law that no more than 20 percent of a State's grant can be used for institutionalized individuals.

The Senate recedes.

(c) The House bill, but not the Senate amendment, requires that the needs of residents of rural areas, residents of urban areas with high rates of unemployment and adults with limited English language skills must be specifically in the State plan.

The Senate recedes.

(d) The House bill requires the State plan to describe the procedures the State will use to assure adequate consultation, cooperation and coordination between the State educational agency and the State manpower services councils and other agencies involved in employment and training for adults.

The Senate amendment requires the State plan to provide for such consultation and coordination also with State occupational information systems and for coordination of programs under the Adult Education Act with other programs designed to provide reading instruction for adults.

in other subjects which the applicant considers appropriate for testing; and

"(D) shall contain the assurances of the applicant that any student who fails any examination provided for under subparagraph (C) of this paragraph shall be offered supplementary instruction in the subject matter covered by such examination.

"(c) The Commissioner shall award a grant to any applicant, in such amounts as the Commissioner considers appropriate, only if (1) the Commissioner approves the educational proficiency plan submitted by the applicant pursuant to subsection (b) of this section and (2) the application submitted pursuant to such subsection satisfies all other requirements established by the Commissioner. Grants awarded under this section may be used by applicants to implement their educational proficiency plans, including the provision of supplementary instruction which would be provided to students who fail the examinations.

"(d) Nothing in this section shall authorize the Commissioner to impose tests on State educational agencies or local educational agencies, and no such agency shall be compelled in any way to apply for funds under this section.

"(e) There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal year 1979, and for each of the four succeeding fiscal years.

"ACHIEVEMENT TESTING ASSISTANCE

"SEC. 222. (a) The Commissioner is authorized, either directly or through grants or contracts awarded to State and local educational agencies and other public and private nonprofit agencies, organizations, and institutions, to assist State and local educational agencies to develop their capacity to conduct programs of testing the achievement in the basic skills of children in elementary and secondary schools. The activities which may be supported under this section include—

"(1) disseminating information to State and local educational agencies on the availability and uses of achievement tests;

"(2) training of and assistance to administrators, teachers, and other instructional personnel in the use of tests and test results; and

"(3) research and education designed to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs.

"(b) There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal year ending September 30, 1979 and for each of the three fiscal years thereafter.".

[TITLE III—SUPPLEMENTARY EDUCATIONAL CENTERS AND SERVICES; GUIDANCE, COUNSELING, AND TESTING

[APPROPRIATIONS AUTHORIZED

[SEC. 301. (a) The Commissioner shall carry out a program for making grants for supplementary educational centers and services, to

APPENDIX B

OTHER LEGISLATIVE ATTEMPTS

TO MANDATE COMPETENCY TESTING

95TH CONGRESS
1ST SESSION

H. R. 6088

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1977

Mr. MOTT introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Elementary and Secondary Education Act of 1965 to require State educational agencies to establish basic standards of educational proficiency applicable to secondary school students.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VIII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881 et seq.) is amended by adding at the end thereof the following new section:

"BASIC EDUCATIONAL STANDARDS

"SEC. 813. (a) (1) No application made by a State educational agency for assistance under this Act may be con-

sidered unless the State educational agency making such application provides assurances that such State educational agency will establish and implement basic standards of educational proficiency in accordance with the plan of such State educational agency approved under subsection (b) (4) or in accordance with applicable Federal standards. Such standards shall include the administration of a reading, writing, and mathematics proficiency examination, in accordance with the provisions of this section, to each student enrolled in secondary schools in the State involved.

"(2) Such examination shall be administered to a student during the academic year preceding the academic year during which such student completes the requirements necessary for graduation from secondary school. If such student fails to achieve a passing grade in such examination, such student shall be given an opportunity to take such examination during the following academic year.

"(3) A passing grade in such examination shall be a requirement necessary for graduation from secondary school. A local educational agency may not certify the graduation of any student who has not achieved a passing grade in such examination.

"(4) Such examination shall be designed to test proficiency in writing skills, reading and comprehension, and mathematics skills and comprehension. Such examination

shall emphasize testing the ability of a student to use and understand language and to read with facility and understanding.

"(b) (1) There is hereby established a commission to be known as the National Commission on Basic Education (hereinafter in this section referred to as the 'Commission').

"(2) The Commission shall be composed of fifteen members as follows:

"(A) three appointed by the President from among individuals serving on State boards of education;

"(B) three appointed by the President from among individuals serving on local boards of education;

"(C) three appointed by the President from among persons employed as teachers in secondary school systems; and

"(D) six appointed by the President from members of the general public.

"(3) Members of the Commission shall serve without pay. While away from their homes or regular places of business, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

"(4) The Commission shall—

"(A) establish basic standards of educational pro-

ficiency designed to evaluate the reading, writing, and mathematics skills of secondary school students;

"(B) review plans submitted by State educational agencies for the establishment of standards in conformity with the basic standards established by the Commission under subparagraph (A); and

"(C) determine whether to approve plans submitted by State educational agencies under this paragraph.

"(5) Each State agency which desires to receive assistance under this Act shall submit the plan referred to in paragraph (4) (B) no later than two years after the effective date of this section. The Commission shall complete its review of all such plans no later than three years after such effective date.

"(6) The Commission shall transmit a report to the President and to the Congress, no later than three years after the effective date of this section, which contains a detailed statement of the activities of the Commission under this section. The Commission shall cease to exist thirty days after the transmission of such report. The Commissioner of Education shall be responsible for the administration of the provisions of this section after the termination of the existence of the Commission.

"(c) In any case in which the Commission disapproves

a plan submitted by a State educational agency under subsection (b) (4) (B), the basic standards established by the Commission under subsection (b) (4) (A) shall be placed in effect in the State involved if such State desires to receive assistance under this Act.

"(d) The Commission may award grants to State educational agencies, in such amounts as the Commission considers necessary, during the two-year period following the effective date of this section to assist such State educational agencies in preparing basic standards to be submitted to the Commission under subsection (b) (4) (B).".

95TH CONGRESS
1ST SESSION

H. R. 9574

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 14, 1977

Mr. MOTTL introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Elementary and Secondary Education Act of 1965 to provide assistance for the establishment of basic standards of educational proficiency applicable to public school students.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VIII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881 et seq.) is amended by adding at the end thereof the following new section:

"BASIC EDUCATIONAL STANDARDS

"SEC. 813. (a) (1) A State educational agency (or a local educational agency in the case of any such agency which is located in a State in which the State educational agency does not participate in the program under this sec-

tion) may receive financial assistance under this section by submitting to the Commission established under subsection (b) (1) an application which provides assurances that such educational agency will establish and implement basic standards of educational proficiency in accordance with a plan of such educational agency approved under subsection (b) (4). Such standards shall include the administration of proficiency examinations which primarily measure proficiency in reading, writing, and mathematics to each student enrolled in public schools in the State or school district involved.

"(2) Such examinations shall be administered to a student at the beginning of the academic year at the sixth, eighth, tenth, and twelfth grade levels.

"(3) A passing grade in any such examination shall not be a requirement necessary for advancement in grade level or for graduation from secondary school.

"(4) Any student who fails any such examination shall be provided with an opportunity to participate in a remedial program in the subject matter covered by the examination.

"(5) Each such examination shall be designed to test proficiency in writing skills, reading and comprehension, and mathematics skills and comprehension. Such examination shall emphasize testing the ability of a student to use and understand language and to read with facility and understanding.

"(b) (1) There is hereby established a commission to be known as the National Commission on Basic Education (hereinafter in this section referred to as the 'Commission').

"(2) The Commission shall be composed of fifteen members as follows:

"(A) three appointed by the President from among individuals serving on State boards of education;

"(B) three appointed by the President from among individuals serving on local boards of education;

"(C) three appointed by the President from among persons employed as teachers in secondary school systems; and

"(D) six appointed by the President from members of the general public.

"(3) Members of the Commission shall serve without pay. While away from their homes or regular places of business, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 (b) of title 5, United States Code.

"(4) The Commission shall—

"(A) establish a series of basic standards of educational proficiency, including tests for measuring such proficiency, designed to evaluate the reading, writing,

and mathematics skills of students at the sixth, eighth, tenth, and twelfth grade levels, and make such series available to any State or local educational agency which requests the series in connection with an application for assistance under this section;

"(B) review applications for assistance under this section submitted by State or local educational agencies, and the plans contained in such applications for the establishment of basic standards of educational proficiency in accordance with subsection (a); and

"(C) approve such applications and plans if the Commission determines the standards to be established bear a reasonable relation to the educational proficiency needed by students at the various levels measured.

"(5) Each State educational agency and each local educational agency which desires to receive assistance under this section shall submit the plan referred to in paragraph (4) (B) at such time and in such manner as shall be established by the Commission, or after the termination of the Commission, by the Commissioner of Education.

"(6) The Commission shall transmit a report to the President and to the Congress, no later than three years after the effective date of this section, which contains a detailed statement of the activities of the Commission under this section. The Commission shall cease to exist thirty days after the transmission of such report. The Commissioner of Edu-

cation shall carry out the functions of the Commission under this section after the termination of the existence of the Commission.

"(c) (1) In the case of any school district in which standards of educational proficiency under this section, including the proficiency examinations, are not in effect, the Commissioner of Education shall carry out a program of making such examinations available directly to any student attending public schools in such district, upon the request of any parent of such student.

"(2) The Commissioner of Education shall carry out a program of grants to State educational agencies (and local educational agencies in the case of any such agency which is located in a State in which the State educational agency does not participate in the program under this section) in such amounts as the Commissioner of Education considers necessary to assist such educational agencies in preparing and administering basic standards, including examinations, submitted to the Commission under subsection (b) (4) (B), and to pay the costs of providing remedial programs to students in accordance with subsection (a) (4).

"(d) There are hereby authorized to be appropriated to carry out the provisions of this section such sums as may be necessary for the fiscal year ending September 30, 1978, and for each of the four fiscal years thereafter.".

APPENDIX C

THE LAW AND THE REGULATIONS AS PRINTED

IN THE FEDERAL REGISTER

Federal Register

Friday
April 27, 1979

Part VIII

Department of Health, Education, and Welfare

Office of Education

Basic Skills and Educational Proficiency Programs; Proposed Rule

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 162]

Basic Skills and Educational Proficiency Programs

AGENCY: Office of Education, HEW.

ACTIONS: Notice of Proposed Rulemaking (NPRM).

SUMMARY: These regulations govern several programs relating to basic skills and educational proficiency.

The overall purpose of these programs—established through the Education Amendments of 1978—is to help public and private agencies coordinate resources and improve their basic skills efforts for children, youth, and adults.

DATES: Comments must be received on or before June 28, 1979.

Public meetings will be held on these proposed regulations on the following dates at the following places:

City, Date, and Time

Region I—Boston, May 9, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region II—New York, May 10, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region III—Philadelphia, May 7, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region IV—Atlanta, May 9, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region V—Chicago, May 8, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region VI—Dallas, May 7, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region VII—Kansas City, May 10, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region VIII—Denver, May 9, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region IX—San Francisco, May 8, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.
Region X—Seattle, May 7, 1979, 1:00–5:00 p.m., 7:00–9:00 p.m.

ADDRESSES: Comments should be addressed to Mr. Thomas M. Keyes, U.S. Office of Education, 400 Maryland Avenue, S.W., (Donohoe Building, Room 1150), Washington, D.C. 20202.

Public Meetings will be held in—

Region I—Boston

Administration Building, Boston School Department, Boston Committee Hearing Room, 26 Court Street, Boston, Massachusetts 02203.

Region II—New York

Bank Street College of Education, Auditorium, 610 West 112 Street, New York, New Yor 10025.

Region III—Philadelphia

Drexel University, Mandell Theater, 3210 Chestnut Street, Philadelphia, Pennsylvania 19104.

Region IV—Atlanta

Sale Hall, Morehouse College, Atlanta, Georgia 30314.

Region V—Chicago

William Rainey Harper College, Algonquin & Roselle Road, Building A—Board Room, Palatine, Illinois 60067.

Region VI—Dallas

El Centro College, Performance Hall, Main & Lamar Streets, Dallas, Texas 75202 (Use Market Street Entrance).

Region VII—Kansas City

Board of Education, Auditorium, 1211 McGee, Kansas City, Missouri 64106.

Region VIII—Denver

George Washington High School, 6355 South Monaco, Denver, Colorado, 80224.

Region IX—San Francisco

San Francisco Community College, Community College Center, 800 Mission Street & Corner of 4th Street, San Francisco, California 94102.

Region X—Seattle

Pacific Special Education Center, SEA-MAT Center, 1330 North 90th Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Keyes, U.S. Office of Education, Telephone (202) 245–2710.

FOR INFORMATION ON PUBLIC MEETINGS IN THE REGIONAL OFFICE CITIES, CONTACT THE APPROPRIATE REGIONAL COMMISSIONER FOR EDUCATION PROGRAMS:

Region I, Boston, Dr. Thomas J. Burns, 617–223–7205
Region II, New York, Dr. William D. Green, 212–264–4370
Region III, Philadelphia, Dr. Albert C. Crambert, 215–596–1001
Region IV, Atlanta, Dr. William L. Lewis, 404–221–2063
Region V, Chicago, Dr. Juliette Noone Lester, 312–353–5215
Region VI, Dallas, Mr. Edward J. Baca, 214–787–3628
Region VII, Kansas City, Dr. Harold Blackburn, 816–374–2276
Region VIII, Denver, Dr. John Runkel, 303–837–3544
Region IX, San Francisco, Dr. Caroline Gillen, 415–556–4920
Region X, Seattle, Mr. Allen Apodaca, 206–442–0460

SUPPLEMENTARY INFORMATION:

The following section provides information about such matters as: (1) regulations governing general administrative matters; (2) questions likely to be asked by interested parties; and (3) procedures for public participation.

-46-

(a) Education Division General Administrative Regulations

These proposed regulations for Basis Skills and Educational Proficiency do not contain certain types of requirements that will be covered in the Education Division General Administrative Regulations (EDGAR). The EDGAR will replace the General Provisions for Office of Education Programs Regulations and soon will be published as a Notice of Proposed Rulemaking.

Anyone wanting to comment on the requirements in EDGAR should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to the Basic Skills and Educational Proficiency programs will now be among those covered in part in EDGAR, as well as in these program regulations:

(1) How an applicant applies for a grant.

(2) How a grant is made to an applicant.

(3) How to apply to the State for a subgrant.

(4) How a subgrant is made to an applicant.

(5) Certain conditions that must be met by an applicant.

(6) [illegible] administrative responsibilities of a [illegible].

(7) Compliance procedures used by the Commissioner.

(b) Questions and Answers

What kinds of projects are covered by these regulations?

The regulations are divided into three components: (1) National Basic Skills Improvement, (2) State Basic Skills Improvement, and (3) Educational Proficiency.

(1) There are three programs in the National Basic Skills Improvement component. The *Basic Skills Improvement in the Schools Program* assists projects that demonstrate improved basis skills instruction in the schools. The *Parent Participation Program* assists projects that enlist parents and volunteers in teaching basic skills to children. The *Out-of-School Basic Skills Improvement Program* assists projects to help children, youth, and adults improve their basic skills outside the normal school program.

(2) The State Basic Skills component consists of two programs. Under the *Formula Grant Program*, the States subgrant most of the funds they receive to support activities that promote the State basic skills plan. The *State Leadership Program* helps the State

carry out its own leadership activities in basic skills.

(3) The Educational Proficiency component consists of two programs. The *Proficiency Standards Program* assists projects to help students reach levels of educational proficiency set by the applicant. The *Achievement Testing Program* helps improve the capacity of SEAs and LEAs to measure basic skills achievement.

Why is "basic skills" defined as "mathematics, reading, and oral and written communication"?

Congress defines basic skills this way in the law.

Why are "reading," "mathematics," "oral communication," and "written communication" not defined in these regulations?

The Commissioner believes that a broad definition will encourage applicants to propose creative teaching techniques within the four basic skills areas.

Is all necessary information available in these regulations?

No. These regulations do not repeat the Act. Often they paraphase or cross reference the Act, which is republished here as an appendix to these regulations. An applicant should also read the applicable sections of EDGAR, as well as instructions on the application form and the application notice published in the Federal Register. The application notice contains such information as where to obtain an application form, programs for which funds are available, where to send the application, and the amount of money for which an applicant may apply.

Why are some programs under the Act, not included in these regulations?

Some programs are not included here because the Commissioner proposes to implement certain sections of the law by individual contract rather than by grants. Sections 204 (technical assistance), 207 (technology and instruction), 209 (evaluation and dissemination), 231 (inexpensive book distribution), and 232 (special mathematics instruction) will be carried out by contract because the U.S. Office of Education (OE) wishes to obtain very specific products and results. For the grant programs covered by these regulations, OE announces a general goal, and applicants determine the specific expected results under that goal.

What happens if an applicant, at the time of writing the application, has already accomplished an item required in the regulations?

An applicant need not repeat the required activity, but should indicate how and when the required acitvity took place. If the applicant has, for example, recently conducted a basic skills needs assessment in its project schools, it should simply report its findings in the application.

Why is such a great emphasis placed on projects that coordinate with other basic skills activities at the Federal, State, and local levels?

Congress refers frequently in the Act to the need for coordination. Experience shows there are better results if projects engage in mutual sharing and mutual planning. For these reasons—

(1) Coordination of resources will be emphasized in individualized State agreements developed under the State Basis Skills programs;

(2) Points will be awarded to National Basic Skills applicants for their coordination plans; and

(3) State educational agencies will be asked to comment on the consistency of LEA-related applications to the State basic skills plan.

Are preschool projects allowable?

The law does not authorize preschool projects under the Basic Skills Improvement in the Schools Program. However, local school districts may apply to the State to conduct a preschool project as a subgrantee under the State Formula Grant Program.

Does an applicant for a Basic Skills Improvement in the Schools project have to propose instructional activities in all four basic skills subject areas: reading, mathematics, oral communication, and written communication?

No. An applicant must conduct a needs assessment for all four subject areas within the project school(s) to be served. If the data show that emphasis should be placed on one, two, or three (but not all four) of the basic skills subject areas, and if there is an existing instructional program in the remaining areas, the applicant may propose Federal assistance for just the subjects in which there is a special need.

In the Out-of-School Basic Skills Improvement program must the project be conducted outside of a school building?

No. A recipient may implement the project inside a school building or any other appropriate building. A recipient may work with children, youth, or adults who are or who are not currently enrolled in a school instructional program. However, the instruction given to the participants must be outside the normal school instructional program.

If an applicant applies for multi-year funding for programs in the National Basic Skills component will Federal funding remain at the same level year after year?

No. The Commissioner intends to fund projects at a certain level the first year and then at declining levels for each of the following years. The Commissioner believes that a grantee must assume an increasing fiscal responsibility as its project matures. Expected support levels will be announced annually in the closing date notice published in the Federal Register.

What is an "individualized" approach to agreements under the State basic skills improvement programs?

Experience shows that States vary considerably in their basic skills activities. Thus, the Commissioner does not propose to require that all States do all of the same activities in the same sequence. Rather, each State shall propose those activities that are needed in that State and in a time sequence set by the State.

Why are funds under the State Leadership Program distributed on the basis of population rather than by competitive grants?

The Commissioner wants to build the leadership capacity of all States in basic skills.

Do the terms "measures of achievement," "assessment," and "tests" in the law and in these regulations refer to a certain type of test such as a norm-referenced test?

No. The Commissioner places great emphasis on grantees using their descretion in measuring achievement in basic skills. The Commissioner encourages grantees to use varied, valid, and reliable measures of achievement.

(c) Invitation To Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. If you are interested in making oral comments at a public meeting, please call the appropriate Regional Commissioner of Education. He/she will schedule a time for your comments to be given.

Persons who do not notify the Regional Commissioner of their intention to make oral comments will be given an opportunity to speak after those who registered. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

Also, interested persons are invited to submit written comments, suggestions, and recommendations to be considered prior to the issuance of the final regulations. Comments suggestions, and recommendations may be sent to the address given at the beginning of this

document. All comments received on or before the 60th day after publication of this document will be considered.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 3523, Regional Office Building Three, 7th and D Streets, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

The General Education Provisions Act requires that a citation of statutory authority for each section of the proposed regulations be placed in parentheses on the line following the text of each section. References to "Sec" in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978.

Authority: These proposed regulations are issued under the authority of Title II and Part B of Title IX, of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561.

Dated: April 16, 1979.

Ernest L. Boyer
U.S. Commissioner of Education.

Approved: April 20, 1979.

Hale Champion,
Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Number Not Yet Assigned)

Part 162 of Title 45 Code of Federal Regulations is revised to read as follows:

PART 162—BASIC SKILLS IMPROVEMENT

General Information

Sec.

162.1 Programs under this part.
162.2 Eligible applicants.
162.3 Regulations that apply to the Basic Skills Improvement Program.
162.4 Definitions.
162.5 Submission of applications.

National Basic Skills Improvement

Type of Projects Assisted

162.110 Basic Skills Improvement in the Schools Program: requirements.
162.111 Parent Participation Program: Allowable activities.
162.112 Out-of-School Basic Skills Improvement Program: allowable activities.
162.113 Out-of-School Basic Skills Improvement Program: Requirements for instructional projects.
162.114 Duration of awards.

Selection of Recipients

162.120 State review of applications affecting an LEA.
162.121 Selection criteria.

Conditions of Awards

162.130 Coordination requirement.
162.131 Participation of non-public school children.
162.132 Other requirements for LEAs and SEAs.

State Basic Skills Improvement

How a State Applies for a Grant

162.210 Formula Grant Program: Individualized agreement.
162.211 State Leadership Program: Individualized agreement.

How a Grant is Made to a State

162.220 Formula Grant Program: Apportionment of funds.
162.221 State Leadership Program: Apportionment of funds.

Subgrants Under the Formula Grant Program

162.230 Eligibility for a subgrant.
162.231 Subgrants to local educational agencies: Allowable activities.
162.232 Subgrants to other eligible agencies: Allowable activities.
162.233 Conditions regarding participation of non-public school children.

Educational Proficiency

Types of Projects Assisted

162.310 Proficiency Standards Program: Requirements.
162.311 Achievement Testing Program: Allowable activities.

Selection of Recipients

162.320 State review of applications affecting LEAs.
162.321 Selection criteria.

Authority: Title II and Part B of Title IX, of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561.

General Information

§ 162.1 Programs under this part.

Part 162 contains regulations for a number of programs to improve achievement in the basic skills of reading, mathematics, and oral and written communication. The regulations are divided into three components:

(a) The National Basic Skills Improvement component consists of three programs. They are—

(1) The Basic Skills Improvement in the Schools Program (section 205), which assists projects that demonstrate improved basic skills instruction in the schools;

(2) The Parent Partcipation Program (section 206), which assists activities that enlist parents and volunteers in teaching basic skills to children; and

(3) The Out-of-School Basic Skills Improvement Program (section 208), which assists projects to help children, youth, and adults improve their basic skills outside the normal school program.

(b) The State Basic Skills Improvement component consists of two programs. They are—

(1) The Formula Grant Program (sections 221 through 223), which provides support to help a State plan and implement basic skills improvement programs, primarily through subgrants by the States to eligible subgrantees; and

(2) The State Leadership Program (sections 221, 224), which provides support for a State to—

(i) Carry out leadership and training in the area of basic skills; and

(ii) Develop and implement Statewide programs for improving the basic skills achievement of children, youth, and adults.

(c) The Educational Proficiency component consists of two programs. They are—

(1) The Proficiency Standards Program (section 921), which assists projects to help students reach levels of educational proficiency set by the applicant; and

(2) The Achievement Testing Program (section 922), which provides assistance to improve the capacity of State educational agencies (SEAs) and local educational agencies (LEAs) to measure the basic skills achievement of children.

(d) The Commissioner enters into contracts to carry out the programs authorized by sections 204 (technical assistance), 207 (technology and instruction), 209 (evaluation and dissemination), 231 (inexpensive book distribution), and 232 (special mathematics instruction).

(20 U.S.C. 2885, 2886, 2888, 2901–2904, 3331, 3332)

§ 162.2 Eligible applicants.

(a) The following kinds of agencies are eligible to apply for any of the three programs in the National Basic Skills Improvement component:

(1) An SEA.

(2) An LEA.

(3) A public or private agency, organization, or institution, including an institution of higher education. A for-profit agency, organization or institution is not eligible to compete for a grant but may receive contracts under any procurement that may be issued for these programs.

(b) Any State is eligible to apply for either or both programs in the State Basic Skills Improvement component.

(c) The following kinds of agencies are eligible to apply for the Proficiency Standards Program:

(1) An SEA.

(2) An LEA, if the appropriate SEA has not submitted an application. The

LEA is responsible for contacting the SEA to determine if there will be a State application.

(d) The following kinds of agencies are eligible to apply for the Achievement Testing Program:

(1) An SEA.

(2) An LEA.

(3) A public or private agency, organization, or institution, including an institution of higher education. A private agency, organization, or institution is not eligible to receive a grant, but may receive a contract under any procurement that may be issued for these programs.

(20 U.S.C. 2884, 2902–4, 3331, 3332)

§ 162.3 Regulations that apply to the Basic Skills Improvement Program.

(a) *Regulations.* The following regulations apply to the Basic Skills Improvement Program.

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100c (Definitions) and—

(i) For the programs in the National Basic Skills Improvement component and the Educational Proficiency component, Part 100a (Direct Grant Programs).

(ii) For the programs in the State Basic Skills Improvement component, Part 100b (State-Administered Programs).

(2) The regulations in this part.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in Part 100c:

Applicant
Application
Award
Budget
Commissioner
Contract
Grant
Institutions of higher education
Local educational agency
Nonprofit
Non-public
Project
Public
Recipient
Secondary school
State
State educational agency
Subgrant
Subgrantee

(20 U.S.C. 1221e–3(a)(1))

§ 162.4 Definitions.

As used in this part—

"Basic Skills" means reading, mathematics, and oral and written communication; and

"Section" or "Sec.", unless otherwise indicated, means a section of Title II or Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 2881–2922, 3331–3332)

§ 162.5 Submission of applications.

(a) For the programs in the National Basic Skills Improvement component and the Educational Proficiency component—

(1) The Commissioner establishes—in a notice published in the Federal Register—an annual closing date for receiving applications.

(2) An applicant may seek assistance for each program separately or for more than one program in a consolidated application if the applicant—

(i) Divides the project into identifiable components in the application; and

(ii) Seeks assistance from only one program for each component of the project.

(3) The Commissioner reviews separately each programmatic component of a consolidated application in competition with other applicants seeking assistance under that program.

(b) For the programs in the State Basic Skills Improvement component—

(1) An applicant enters into individualized agreements with the Commissioner under the requirements described in—

(i) Section 162.210 of these regulations for the Formula Grant Program; and

(ii) Section 162.211 of these regulations for the State Leadership Program.

(2) The Commissioner and the State may decide to enter into a consolidated agreement under the Formula Grant Program and the State Leadership Program if the State wishes to participate in both programs.

(20 U.S.C. 2885, 2886, 2888, 2902, 2904)

National Basic Skills Improvement

Types of Projects Assisted

§ 162.110 Basic skills improvement in the schools program: Requirements.

(a) An applicant shall include in its project the six program elements described in the "Instruction in Basic Skills" section of the Act (sec. 205).

(b) An applicant shall propose to conduct its project at the elementary level, the secondary level or both.

(c)(1) Each project must address one or more of the four basic skills areas—reading, mathematics, oral communication, or written communication.

(2) If the proposed instructional activities do not address all four basic skills areas, the applicant shall demonstrate that—

(i) The instructional needs of the target population in all four basic skills areas have been assessed; and

(ii) Those not addressed by the project are being met.

(20 U.S.C. 2885)

§ 162.111 Parent participation program: Allowable activities.

Examples of activities that enlist parents and volunteers in teaching children basic skills are—

(1) Developing and disseminating materials for parents to use with their children in the home; or

(2) Conducting voluntary training activities for parents in areas directly related to the school curriculum.

(20 U.S.C. 2886)

§ 162.112 Out-of-school basic skills improvement program: Allowable activities.

A recipient under this program—described in sec. 208 as "Involvement of Educational Agencies and Private Organizations"—may conduct activities such as the following:

(a) Free distribution of books to children or lending or selling books to persons for the purpose of improving basic skills.

(b) Instructional programs and voluntary tutorial programs outside of the school for those in need of basic skills improvement. These activities may be known as academies.

(c) Efforts by community organizations to encourage individuals to improve their basic skills.

(20 U.S.C. 2888)

§ 162.113 Out-of-school basic skills improvement program: Requirements for instructional projects.

Each project must include:

(a) Procedures for—

(1) Identifying and recruiting participants in most need of basic skills improvement; and

(2) Focusing on the individual's ability to function effectively in society;

(b) Provision to conduct instruction at convenient times and locations; and

(c) Procedures for effective coordination with other organizations, such as employment and training agencies, private businesses, vocational and technical institutions, and local schools.

(20 U.S.C. 2889)

§ 162.114 Duration of awards.

(a) Under the conditions described in EDGAR, applicants may apply for multi-year awards of up to 48 months.

(b) Under terms announced annually in a notice of closing date published in the Federal Register, the Commissioner—

(1) States the amount, if any, available for multi-year awards; and

(2) Decreases the amount of funding in each year of a multi-year award.

(20 U.S.C. 2885, 2889, 2921)

Selection of Recipients

§ 162.120 SEA review of applications affecting an LEA.

(a) An applicant shall seek written comments from the SEA in each State in which the proposed activities are to take place if—

(1) The applicant is an LEA; or

(2) The applicant proposes to conduct any activity that—

(i) Takes place in an instructional program operated by an LEA; or

(ii) Involves preservice or in-service training of LEA teachers.

(b) In seeking the SEA's comments, the applicant shall specifically ask the SEA to state whether it considers the proposed activities to be consistent with the State's basic skills plan.

(c) The SEA may comments on the consistency of the proposed activities with the State's basic skills plan only if it has informed potential applicants in a timely manner of the criteria by which it intends to judge consistency.

(d) The applicant shall submit a copy of its application to the SEA 15 days before the closing date for submitting applications to the Commissioner. To ensure consideration of its comments, the SEA shall forward its comments to the Commissioner within 30 days.

(e) The Commissioner considers an application for funding if—

(1) The SEA has indicated that the application is consistent with the State's basic skills plan;

(2) The SEA was given the required opportunity to comment, but did not do so; or

(3) The Commissioner determines that the proposed activities make a special contribution to the purposes of the Act.

(20 U.S.C. 2881, 2882(b), 2890)

§ 162.121 Selection criteria.

(a) In considering an application for funding, the Commissioner uses general selection criteria found in EDGAR. The value assigned to each criterion indicates the relative importance the Commissioner places on that criterion.

(1) Plan of operation. (15 points)

(2) Quality of staff. (10 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (7 points)

(5) Adequacy of resources. (3 points)

(b) Specific criteria are also used to evaluate applications. The specific criteria comprise 60 possible points.

(1) The extent to which the project objectives are clear and are based on the needs of the target population, and on research and experience regarding basic skills instruction. (15 points)

(2) The extent to which the project provides for effective coordination of Federal, State, and local resources and activities. (15 points)

(3) The extent to which affected schools, organizations, and individuals have been and will be involved in planning and implementing the proposed activities. (10 points)

(4) The extent to which the project's results can be incorporated into regular instructional programs in the school; basic skills improvement activities in non-school settings; or statewide basic skills plan. (10 points)

(5) The quality of a plan to validate the results of the project and to disseminate those results to the general public and interested agencies and institutions. (10 points)

(c) The Commissioner may take into account the geographic distribution of awards among the States in deciding which projects to support.

(20 U.S.C. 2885, 2888, 2889)

Conditions of Awards

§ 162.130 Coordination requirement.

A recipient shall coordinate its activities with other local, State, and federally-supported activities relating to basic skills improvement in the project area.

(20 U.S.C. 2881–2890)

§ 162.131 Participation of nonpublic school children.

An SEA or LEA applicant under each of the three programs shall provide assurance in its application that—

(a) In designing the project, the applicant has consulted with non-public school officials on the needs of children in non-public elementary and secondary schools; and

(b) To the maximum extent possible, and taking into account in the area to be served the number of non-public school children who have the educational needs the project is intended to address, the applicant will provide an opportunity for those non-public school children to participate in the project on a basis comparable to that provided for public school children.

(20 U.S.C. 2882)

§ 162.132 Other requirements for LEA's and SEA's.

An SEA or LEA applicant shall include an assurance in its application that it will have effective procedures to—

(a) Evaluate the effectiveness of the project and report its findings to the Commissioner; and

(b) Incorporate successful practices into the regular instructional program.

(20 U.S.C. 2882)

State Basic Skills Improvement

How a Grant is Made a State

§ 162.210 Formula grant program: Individualized agreement.

An SEA wishing to participate in the program shall develop with the Commissioner an individualized agreement that—

(a) Describes a coordinated program to improve basic skills in the State, including recent activities in the State, the proposed goals and activities, evaluation plans, and expected outcomes; and

(b) Meets the requirements for use and distribution of funds, consultation, and evaluation that are listed in the Act's section on "Agreements with State educational agencies" (222(a)).

(20 U.S.C. 2901–2903)

§ 162.211 State leadership program: Individualized agreement.

A State wishing to participate in the program shall enter into an individualized agreement with the Commissioner to carry out activities based on needs identified by the State. These activities are described in the "State Leadership Program" section of the Act (sec. 224).

(20 U.S.C. 2904)

How a Grant Is Made to a State

§ 162.220 Formula grant program: Apportionment of funds.

(a) Each year the Commissioner apportions available funds among the States that have entered into an agreement under § 162.210 according to the formula described in section 223 of the Act ("Distribution of Funds"). If any States are not funded, the Commissioner apportions the excess funds among those States that have entered into an agreement with the Commissioner according to their school age population (5 through 17 years).

(b) The State may retain no more than 5 percent of the grant to administer its agreement with the Commissioner.

(c) The State shall subgrant to LEAs to least 70 percent of the State allotment.

(20 U.S.C. 2903)

§ 162.221 State leadership program: Apportionment of funds.

The Commissioner apportions available funds among the States on the same basis described in § 162.220(a).

(20 U.S.C. 2904)

Subgrants Under the Formula Grant Program

§ 162.230 Eligibility for a subgrant.

The following kinds of agencies are eligible to apply to the State for a subgrant—

(a) An LEA.

(b) An institution of higher education.

(c) Any other public or nonprofit private agency or organization.

(20 U.S.C. 2902(b))

§ 162.231 Subgrants to local educational agencies: Allowable activities.

An LEA shall conduct—

(a) An in-school project that meets the conditions described in sec. 222(d); or

(b) A parent involvement project that includes the types of activities described in sec. 222(e).

(20 U.S.C. 2902 (d) and (e))

§ 162.232 Subgrants to other eligible agencies: Allowable activities.

An applicant other than an LEA shall conduct a parent involvement project that includes the types of activities described in sec. 222(e).

(20 U.S.C. 2902(e))

§ 162.233 Conditions regarding participation of nonpublic school children.

(a) A State shall insure that its subgrantees provide for the equitable participation of children attending nonpublic schools.

(b) The expenditures for services and arrangements for those non-public students must be equal to those provided to children in public schools based on the number of children to be served and the special educational needs of those children.

(20 U.S.C. 2902(c))

Educational Proficiency

Types of Projects Assisted

§ 162.310 Proficiency standards program: Requirements

An applicant under the Proficiency Standards Program shall in its application—

(a) Describe the proficiency standards being established in basic skills and in other proposed subjects;

(b) Describe instructional projects designed to assist students in reaching the proficiency standards; and

(c) Assure that additional instructional assistance is provided to students who fail the proficiency standards test.

(20 U.S.C. 3331)

§ 162.311 Achievement testing program: Allowable activities.

A recipient may conduct activities such as the following:

(a) Provide information to SEAs and LEAs about different measures of achievement and uses of those measures.

(b) Provide training for educational leaders and instructional personnel in SEAs and LEAs on different measures of achievement and uses of those measures.

(c) Conduct research on measuring achievement and diagnosing instructional needs.

(20 U.S.C. 3332)

Selection of Recipients

§ 162.320 State review of applications affecting an LEA.

The State coordination procedures in § 162.120 apply to the two programs in this component.

(20 U.S.C. 3331–3332)

§ 162.321 Selection criteria.

(a) In considering an application for funding under the Proficiency Standards Program or the Achievement Testing Program, the Commissioner uses general selection criteria found in EDGAR. The value assigned to each criterion indicates the relative importance the Commissioner places on that criterion.

(1) Plan of operation. (20 points)

(2) Quality of staff. (7 points)

(3) Budget and cost effectiveness. (10 points)

(4) Evaluation plan. (15 points)

(5) Adequacy of resources. (3 points)

(b) Specific criteria are also used to evaluate applications. The specific criteria comprise 45 possible points.

(1) For the Proficiency Standards Program, the specific criteria are:

(i) The project objectives, including the extent to which the objectives are based on needs of the target population, and on research and experience regarding the setting of proficiency standards. (20 points)

(ii) The extent to which the applicant proposes effective procedures for involving teachers, parents, and experts in developing and adopting the standards. (10 points)

(iii) The extent to which the applicant proposes effective procedures to convert proficiency test results into usable information for improving curriculum and instruction. (15 points)

(2) For the Achievement Testing Program, the specific criteria are:

(i) The project objectives, including the extent to which the objectives are based on the needs of the applicant agency and on research and experience regarding achievement testing. (20 points)

(ii) The extent to which the applicant proposes effective procedures for involving teachers, parents, and experts in developing and implementing the project. (15 points)

(iii) The extent to which the applicant proposes effective procedures to convert achievement test results into usable information for improving curriculum and instruction. (15 points)

(c) The Commissioner may take into account the geographic distribution of awards among the States in deciding which projects to support.

(20 U.S.C. 3331, 3332)

[Editorial note.—The following appendix will not appear in the Code of Federal Regulations]

APPENDIX

PUBLIC LAW 95-561—NOV. 1, 1978

TITLE II—ESTABLISHMENT OF A NEW TITLE II OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

Basic Skills

Sec. 201. Title II of the Elementary and Secondary Education Act of 1965 (hereinafter in titles II through IX of this Act referred to as "the Act") is amended to read as follows:

"TITLE II—BASIC SKILLS IMPROVEMENT

"Part A—National Program

"Purpose

"Sec. 201. The purpose of this part is—

"(1) to assist Federal, State, and local educational agencies to coordinate the utilization of all available resources for elementary and secondary education to improve instruction so that all children are able to master the basic skills of reading, mathematics, and effective communication, both written and oral;

"(2) to encourage States to develop comprehensive and systematic plans for improving achievement in the basic skills;

"(3) to provide financial assistance to State and local educational agencies for the development of programs in the basic skills;

"(4) to develop means by which parents working with the schools can contribute to improving the educational achievement of their children;

"(5) to encourage the involvement of the private sector in the delivery to children, youths, and adults of educational services and materials that will improve achievement in the basic skills; and

"(6) to expand the use of television and other technology in the delivery of

instructional programs aimed at improving achievement in the basic skills.

"Applications

"Sec. 202. (a) The Secretary may make a grant or award a contract under this part only upon the submission of an application by an eligible entity at the time and in the form prescribed by the Secretary. Each such application by a State or local educational agency shall provide assurances that—

"(1) in designing the proposal for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with private school officials; and, to the maximum extent feasible, and consistent with the number of such children in the area to be served who have the educational needs the proposal is intended to address, those children will be provided an opportunity to participate in the proposed activity on a basis comparable to that provided for public school children;

"(2) procedures have been developed to evaluate the effectiveness of the proposed activity in achieving the purposes of this title; and

"(3) procedures have been developed for incorporating successful practices developed with assistance under this title into the regular instructional program.

"(b) No grant or contract may be awarded to a local educational agency under this part unless the appropriate State educational agency has been provided an opportunity for at least thirty days to comment on the application.

"Acceptance of Gifts

"Sec. 203. Notwithstanding the provisions of section 408(a)(3) of the General Education Provisions Act, the Secretary may accept, on behalf of the United States, conditional or unconditional gifts or donations of services, money, or property, made for any activities authorized to be carried out under this title.

"Grants and Contracts

"Sec. 204. (a) In order to achieve the purposes of this part, the Secretary is authorized, during the period of October 1, 1978, through September 30, 1983, to make grants to, and enter into contracts with, State and local educational agencies, and other public and private agencies, organizations, and institutions to carry out planning, research, development, demonstrations (including training of leadership personnel, evaluation, and dissemination, as described in sections 205 through 209), except that no grant may be made under this part to other than a public or nonprofit private agency, organization, or institution.

"(b) The Secretary may provide to such agencies, organizations, and institutions, either directly or through grants or contracts, technical assistance related to the purposes of this part.

"Instruction in Basic Skills

"Sec. 205. The Secretary shall provide assistance, in accordance with section 204, for activities designed to demonstrate improved delivery of instructional services in the areas of reading, mathematics, and oral and written communication, including—

"(1) assessment of schoolwide needs to identify the instructional needs of children in basic skills;

"(2) establishing learning goals and objectives for each school;

"(3) the development of comprehensive programs to address the needs through the use of resources available under this part and other resources from local, State, and Federal programs;

"(4) the demonstration of techniques for coordinating the efforts of local agencies, organizations, and institutions, to improve achievement in basic skills;

"(5) preservice training programs for teaching personnel including teacher aides and other ancillary educational personnel, and in-service training and development programs, designed to enable such personnel to improve their ability to teach basic skills; and

"(6) active involvement of teachers, teacher aides, administrators, and other educational personnel to improve their ability to utilize available resources to carry out the purposes of this part.

"Parental Participation in Basic Skills Instruction

"Sec. 206. The Secretary, in accordance with section 204, shall support activities designed to enlist the assistance of parents and volunteers working with schools to improve the skills of children in reading, mathematics, and oral and written communication. The activities which may be supported under this section include—

"(1) the development and dissemination of materials that, with appropriate training, parents may use in the home to improve their children's performance in those skills; and

"(2) voluntary training activities for parents to encourage them to assist their children in developing basic skills.

"Use of Technology in Basic Skills Instruction

"Sec. 207. The Secretary, in accordance with section 204, shall support development and demonstration activities related to the improved use of television and other technology to contribute to the instruction of children in reading, mathematics, and written and oral communication. The activities authorized under this section shall be designed to expand the variety and improve the quality of instructional efforts involving the use of technology. The activities which may be supported under this section include—

"(1) the development and acquisition of educational programing, including audio and video materials distributed through broadcast, cable, tape, film, cassettes, or other means that provide instruction in basic skills in an effective manner;

"(2) the development and acquisition of instructional materials that supplement educational programing described in clause (1) of this section in order to improve its effectiveness in the school, the home, and other learning environments;

"(3) the development and acquisition of materials to assist teachers in relating such programing, or similar public or commerical programs of educational value, to instruction in the classroom;

"(4) the training of teachers, administrators, and other instructional personnel in the use of educational technology;

"(5) assistance to teachers, administrators, and other instructional personnel for experimentation with new technological approaches to instruciton; and

"(6) distribution of information about, and promotion of the use of, such programing and technology in the classroom and other learning environments.

"Involvement of Educational Agencies and Private Organizations

"Sec. 208. (a) The Secretary shall provide assistance and information to State and local educaticnal agencies, institutions of higher education, and private agencies, organizations, and institutions (such as labor unions, volunteer organizations, and business associations) to support the efforts of such agencies, organizations, and institutions to stimulate children, youths, and adults to improve their achievement in basic skills. The activities which may be supported under this section include—

"(1) programs to motivate children to improve their reading skills through the distribution to children of books;

"(2) instructional programs and voluntary tutorial programs to provide individual assistance outside of the school to children, youths, and adults with instruction needs;

"(3) community efforts to encourage individuals to improve their performance in basic skills; and

"(4) the establishment of programs for lending or selling books to children, youths, and adults.

"(b) Activities supported under subsection (a)(2) may be known as reading academies.

"Collection and Dissemination of Information Relating to Basic Skills Programs

"Sec. 209. The Secretary is authorized to use funds appropriated under this part to collect and analyze information concerning the results of activities carried out under this title and under part C of title IV, including information on the activities which have been successful in improving the achievement of students in the basic skills. Such funds may also be used to disseminate that information to State and local educational agencies and other interested public and private agencies, organizations, and institutions.

"Coordination

"Sec. 210. The Secretary shall establish effective and efficient procedures for coordination between the programs assisted under this part and other parts of this title, with programs assisted under title I and title IV of this Act, title V of the Economic Opportunity Act of 1964, title V of the Higher Education Act of 1965, and other such Federal programs that support efforts to improve the basic skills of children, youth and adults.

"Part B—State Basic Skills Improvement Program

"Statement of Purpose

"Sec. 221. It is the purpose of this part to provide financial assistance to States to enable them—

"(1) to develop comprehensive and systematic statewide plans for improving achievement in the basic skills, to coordinate available resources for elementary and secondary education, and to provide financial assistance to improve the instruction so that all children are able to master the basic skills of reading, mathematics, and effective communication, both written and oral;

"(2) to provide assistance to local agencies in the development and implementation of comprehensive programs to improve basic skills proficiency and instruction in the elementary and secondary schools;

"(3) to develop means by which parents working with the schools can contribute to improving the educational achievement of their children;

"(4) to provide State leadership in the planning, execution, and evaluation of basic skills instructional programs in elementary and secondary schools; and

"(5) to arrange for and assist in the training of educational staff, including special reading and mathematics personnel and specialists needed in programs assisted under this part.

"Agreements With State Educational Agencies

"Sec. 222. (a) Any State which desires to receive grants under this part shall, through its State educational agency, enter into an agreement with the Secretary, in such detail as the Secretary deems necessary, which—

"(1) designates the State educational agency as the agency for administration of the agreement;

"(2) provides for a process of active and continuing consultation with the State educational agency, by persons broadly representative of the educational resources of the State and of the general public, including persons representative of—

"(A) public and private nonprofit elementary and secondary schoolchildren,

"(B) institutions of higher education,

"(C) parents of elementary and secondary schoolchildren,

"(D) areas of professional competence relating to basic skills instruction in reading and mathematics,

"(E) classroom teachers in the State, and

"(F) local administrators including principals and superintendents,

to advise the State educational agency on the planning, development, implementation, and evaluation of a comprehensive State program for improving basic skill;

"(3) describes the basic skills instructional programs in elementary and secondary schools for which assistance is sought under this part and procedures for giving priority to basic skills programs which are already receiving Federal financial asssistance and show reasonable promise of achieving success;

"(4) sets forth criteria for achieving an equitable distribution of that part of the assistance under this part which is made available to local educational agencies pursuant to the second sentence of subsection (b) of this section, which criteria shall—

"(A) take into account the size of the population to be served, beginning with preschool, the relative needs of pupils in different population groups within the State for the program authorized by this part, and the financial ability of the local educational agency serving such pupils, and

"(B) assure that such distribution shall include grants to local educational agencies having high concentrations of children with low reading or mathematics proficiency;

"(5) provides for the coordination and evaluation of programs assisted under this part;

"(6) provides for technical assistance and support services for local educational agencies participating in the program;

"(7) makes provision for the dissemination to the educational community and the general public of information about the objectives of the program and results achieved in the course of its implementation;

"(8) provides for making a report, at least once every three years, and such other reports, in such form and containing such information, as the Secretary may reasonably require to evaluate the effectiveness of the program and to carry out his other functions under this part;

"(9) provides that not more than 5 per centum of the amount allotted to the State under this part for any fiscal year may be retained by the State educational agency for purposes of administering the agreement;

"(10) provides that programs assisted under this part shall be of sufficient size, scope, and quality so as to give reasonable promise of substantial progress toward achieving the purposes of this part; and

"(11) provides that Federal funds expended under the program will supplement the level of State and local funds that would be available for such programs in the absence of Federal assistance, and in no event will supplant such State and local funds.

"(b) Grants for projects to carry out the purposes of this part may be made to local educational agencies (subject to the provision of subsection (c) relating to the participation of private elementary and secondary school pupils), institutions of higher education, and other public and nonprofit agencies and institutions. Not less than 70 per centum of the amount allotted to a State under this part for any fiscal year shall be made available by the State for grants to local educational agencies within that State.

"(c) The provisions of section 130(a)(1) of this Act relating to the participation of children enrolled in private elementary and secondary schools shall apply to programs assisted under this part.

"(d) Each application by a local educational agency within a State for assistance under this part shall be developed in conjunction with teachers and building administrators in such district. The application shall set forth in a systematic strategy for improving basic skills instruction in the local district which provides for the planning and implementation of comprehensive basic skills instructional programs at the school building level. The school level programs shall address the needs of all students and shall utilize, in a coordinated fashion, resources available from all Federal, State, and local sources. Teachers, administrators, and parents shall be involved in the development of the comprehensive school level programs. Such programs shall include—

"(1) diagnostic assessment to identify the needs of all of the children in the school;

"(2) the establishment of learning goals and objectives for the school;

"(3) to the extent practicable, preservice training and inservice training and development programs for teaching and administrative personnel, including teacher-aides and other ancillary educational personnel, designed to enable such personnel to improve their ability to teach students the basic skills;

"(4) activities designed to enlist the support of parents to aid in the instruction of their children at home and school;

"(5) procedures for the evaluation of the effectiveness of the program, including a program of periodic testing of basic skills achievement and the publication of test results on basic skills performance by grade level and by school, without identification of performance of individual children;

"(6) assessment, evaluation, and collection of information on individual children by teachers during each year of a pre-elementary program, to be made available for teachers in the subsequent year, in order that continuity for the individual child not be lost. Such information shall also be available to parents or guardians of the individual children.

"(e) In addition to the grants authorized in subsection (d), the State educational agency may also make grants to support activities designed to enlist the assistance of parents working with schools to improve the skills of their children in reading, mathematics, and oral and written communication. Activities that may be supported under this section include—

"(1) the development and dissemination of materials that parents may use in the home to improve their children's performance in those skills;

"(2) the encouragement of closer contacts between parents and teachers to improve the coordination between learning experiences in the home and those in school;

"(3) planning for, developing and improving centers accessible to parents to provide materials and professional guidance, including volunteers, for parents who desire to assist in the instruction of their children; and

"(4) the demonstration of training programs for parents who desire to develop new skills to complement the instruction their children receive in school.

"(f) The Secretary shall enter into an agreement which complies with the provisions of subsection (a) with any State

which desires to enter into such an agreement.

"Distribution of Funds

"Sec. 223. The Secretary shall distribute grants under the provisions of this part so as to assure that each State having an agreement under section 222 will receive not less than the amount which bears the same ratio to the total amount available for this part for a fiscal year as the number of school age children (aged five through seventeen inclusive) in that State bears to the number of such children in all States, except that any State having an agreement shall not receive less than $50,000 in any such fiscal year.

"State Leadership Program

"Sec. 224. The Secretary is authorized to enter into agreement with State educational agencies for the carrying out by such agencies of leadership and training activities designed to prepare personnel throughout the State to implement programs which have been demonstrated in that State or other States to be effective in overcoming deficiencies in the basic skills, and to develop and implement statewide plans for improving the skills of children, youth, and adults in reading, mathematics, and oral and written communication. The activities authorized by this section shall be limited to—

"(1) the development of a comprehensive statewide program providing for the coordination of all Federal and State programs that provide instruction in basic skills;

"(2) planning activities that involve local administrators, teachers, and parents in the development of strategies to improve instruction in basic skills;

"(3) statewide assessments of need relating to basic skills, including the needs of both students and instructional personnel;

"(4) in-service training programs for local administrators, instructional personnel, and other staff members involved in instruction in basic skills; and

"(5) the provision of technical assistance and the dissemination of information relating to basic skills instruction to local educational agencies and other organizations and institutions involved in programs of instruction in basic skills.

"Part C—Special Programs for Improving Basic Skills

"Inexpensive Book Distribution Program for Reading Motivation

"Sec. 231. (a) The Commissioner is authorized (1) to enter into a contract with a private nonprofit group or public agency (hereinafter in this section referred to as the 'contractor'), which has as its primary purpose the motivation of children to learn to read, to support and promote the establishment of reading motivational programs which include the distribution of inexpensive books to students and (2) to pay the Federal share of the cost of such programs.

"(b) The contract shall provide that—

"(1) the contractor will enter into subcontracts with local private nonprofit groups or organizations or with public agencies (hereinafter referred to as 'subcontractors') under which the subcontractors will agree to establish, operate, and provide the non-Federal share of the cost of reading motivational programs which include the distribution of books by gift or loan, to pre-elementary, elementary or secondary schoolchildren;

"(2) funds made available by the Commissioner to a contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating reading motivational programs as provided in paragraph (1); and

"(3) the contractor will meet such other conditions and standards as the Commissioner determines to be necessary to assure the effectiveness of the programs authorized by this section and will provide technical assistance in furtherance of the purposes of this section.

"(c) The Commissioner shall make no payment of the Federal share of the cost of acquiring and distributing books pursuant to a contract authorized by this section unless he determines that the contractor or the subcontractor, as the case may be, has made arrangements with book publishers or distributors to obtain books at discounts at least as favorable as discounts that are customarily given by such publisher or distributor for book purchases made under similar circumstances in the absence of Federal assistance.

"(d) For purposes of this section—

"(1) the term 'nonprofit', when used in connection with any organization, means an organization no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

"(2) the term 'Federal share' means, with respect to the cost of books purchased by a local private nonprofit group, organization, or public agency for a program in a locality for distributing such books to schoolchildren in that locality, 75 per centum of the cost of that agency or group or organization for such books for such program; except when such nonprofit group, organization or public agency has within the two years preceding its application for assistance, received Federal funds under a program to benefit migrant and seasonal farmworkers in which the Federal share was 100 per centum. In that case the term 'Federal share', under this section, shall mean 100 per centum of the cost of that agency or group or organization for such books that are distributed to the children of migrant and seasonal farmworkers; and

"(3) the term 'pre-elementary school' means a day or residential school which provides pre-elementary education, as determined under State law, except that such term does not include education for children who have not attained three years of age.

"(e) There are authorized to be appropriated to carry out the provisions of this section $9,000,000 for fiscal year 1979, $10,000,000 for fiscal year 1980, $11,000,000 for fiscal year 1981, and $12,000,000 for each of the two succeeding fiscal years. Under such conditions as the Commissioner determines to be appropriate, not to exceed 10 per centum of the amounts appropriated for each fiscal year shall be available for a contract from the Commissioner to the contractor designated under subsection (a) of this section for technical assistance under subsection (b)(3) of this section to carry out the provisions of such section.

"Special Mathematics Program

"Sec. 232. (a) The Commissioner is authorized to make grants to, and enter into contracts with, one or more private nonprofit agencies, institutions, or organizations, for the conduct, in cooperation with one or more local educational agencies, of special programs for the teaching of standard mathematics to children eligible for services under titles I and VI of this Act through instruction in advanced mathematics by qualified instructors with bachelor's degrees in mathematics, or the mathematical sciences from colleges or other institutions of higher education, or equivalent experience.

"(b) There are authorized to be appropriated such sums as may be necessary for fiscal year 1980 and for each of the three succeeding fiscal years, to carry out the provisions of this section.

"Part D—General Provisions

"Authorization of Appropriations

"Sec. 241. There are authorized to be appropriated such sums for the fiscal year 1980 and for each succeeding fiscal year ending prior to October 1, 1983, as may be necessary to carry out the provisions of parts A and B of this title.

"Apportionment of Appropriations

"Sec. 242. (a) From the first $20,000,000 appropriated pursuant to section 241 of any fiscal year the Secretary shall carry out the provision of part A of this title.

"(b) From the amounts in excess of $20,000,000 in any fiscal year the Secretary shall carry out the provisions of part B of this title.".

"TITLE IX—ADDITIONAL PROGRAMS

"Part B—Educational Proficiency Standards

"Grants To Implement Educational Proficiency Standards

"Sec. 921. (a) The Commissioner is authorized to make grants to any State educational agency (or to any local educational agency located in a State in which the State educational agency has not submitted an application for a grant under this section) to carry out any plan approved by the Commissioner in accordance with this section to assist students in achieving levels of educational proficiency compatible with basic standards established by such educational agency.

"(b)(1) Each applicant which desires to receive a grant under this section may submit an application to the Commissioner. Any such application shall be submitted in such form, and in accordance with such procedures, as the Commissioner shall require and shall contain an educational proficiency plan, as described in paragraph (2) of this subsection.

"(2) The educational proficiency plan referred to in paragraph (1) of this subsection—

"(A) shall contain a description of the educational proficiency standards established by the applicant for reading, writing, mathematics, and any other subject for which the State may require such standards;

"(B) shall contain a description of the programs designed to assist students in achieving levels of educational proficiency compatible with the standards described in subparagraph (A) of this paragraph;

"(C) may provide for the administration of examinations to students, at specified intervals or grade levels, to measure their reading, writing, or mathematical proficiency, or their proficiency in other subjects which the applicant considers appropriate for testing; and

"(D) shall contain the assurances of the applicant that any student who fails any examination provided for under subparagraph (C) of this paragraph shall be offered supplementary instruction in the subject matter covered by such examination.

"(c) The Commissioner shall award a grant to any applicant, in such amounts as the Commissioner considers appropriate, only if (1) the Commissioner approves the educational proficiency plan submitted by the applicant pursuant to subsection (b) of this section, and (2) the application submitted pursuant to such subsection satisfies all other requirements established by the Commissioner. Grants awarded under this section may be used by applicants either to continue to implement their ongoing educational proficiency plans, or to implement new plans, including the provision of supplementary instruction to be provided to students who fail the examinations.

"(d) There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years.

"(e) For purposes of this section, the term 'applicant' means any State or local educational agency which submits an application under this section.

"(f) Nothing in this section shall authorize the Commissioner to impose tests on State educational agencies or local educational agencies, and no such agency shall be compelled in any way to apply for funds under this section.

"Achievement Testing Assistance

"Sec. 922. (a) The Commissioner is authorized, either directly or through grants or contracts awarded to State and local educational agencies and other public agencies, organizations, and institutions, and through contracts with private agencies, organizations, and institutions, to assist State and local educational agencies to develop their capacity to conduct programs of testing the achievement in the basic skills of children in elementary and secondary schools. The activities which may be supported under this section include—

"(1) disseminating information to State and local educational agencies on the availability and uses of achievement tests;

"(2) training of and assistance to administrators, teachers, and other instructional personnel in the use of tests and test results; and

"(3) research and evaluation designed to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs.

"(b) Nothing in this section shall authorize the Commissioner to require specific tests or test questions. Any State or local educational agency may refuse to use any test or test question developed under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section for fiscal year 1980, and for each of the three succeeding fiscal years.

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APPENDIX D

REGIONAL HEARING COMMENTS

The second area of recommendation deals with Title IX. I would recommend that the proposed regulations for Title IX, Proficiency Standards Program -- reference Page 25153, Section 162.310 -- be expanded to specify that the funds under this section will be divided equally (not on a formula basis) among all of the applicants. I would also suggest that applicants under this section be encouraged to show evidence of coordination with the comprehensive state plan through their proposed activities. That is the end of my statement.

Lastly, in reviewing the requirements for proficiency standard programs (162.310), we find a definition of a "proficiency standard" absent. The only reference is to a single "proficiency standards test." It assures additional instructional assistance to students who take a proficiency standards test. "Educationally, we cannot support such a limited approach. It is not right to judge any performance based on one test. What we have tried in New Jersey--and it is not fully successful is a validation process. In other words, you give a student one test and it only serves as a trigger for other comprehensive assessment techniques. Students have been tested to death. One test is not fair to the student.

We have students who have been doing exceptionally well, failed one test, and were required to participate in compensatory education program. That doesn't make sense. You can validate that student out. The reverse is also true. A student who needs assistance may pass the test as a result of randomly filling in an answer sheet. He is not eligible for the program. That also doesn't make sense.

This validation process doesn't work in some districts with limited resources where such comprehensive assessment and services is needed the most.

The regulations refer to "additional" instruction, which is not necessarily the same as the "supplementary" instruction called for in the law. The regulations do not specify, as does the law, that this instruction must be in the subject matter covered by the test.

My main concerns are with regard to the Educational Proficiency regulations. In my view, several portions of these regulations do not accurately reflect the intent of the legislation. I would like to highlight a few of these instances.

First, the regulations state that an applicant must assure that additional instruction is provided to students who fail the proficiency tests. This provision seems to be much looser than the law, which specifies that this instruction is to be "supplementary" and in the subject matter covered by the test.

Clarification is requested for subparagraph (c) of Section 162.310. In the required assurance in this paragraph, can the additional instructional services be provided with any available funds including those

from federal grants, or must all of such services be provided with state and local funds.

Section 162.310 and 162.311. Under the heading, "Types of Projects Assisted," 3.11 speaks to the subject, but 310 only describes what is to be in the application. We would like to see the emphasis put on 310 (C), the remediation activity, and I don't think the law prohibits that. We want to support the inclusion of "different measures of achievement."

I would also hope that the regs would not exclude us working with bilingual programs and with special education programs in view of the fact that the objectives that we have set, the proficiencies that we are testing for are the core of any program in this district. And they will simply be interpreted as the demand in a special education class might be. In other words, we have certain proficiencies. If the proficiency can't be met, then the mode that we would be accustomed to in a regular class -- it will be adjusted slightly for whatever the situation might demand. And if we were granted money to do this, we wouldn't want to exclude their participation in this program.

As you know, in a recent report to HEW, the National Academy of Education strongly criticized the use of so-called minimum competency testing as a requirement for a high school diploma (as distinguished from a mere "certificate of attendance"). This criticism was echoed by a number of experts at the National Conference on Achievement Testing and Basic Skills in March 1978, sponsored by HEW, including former Commissioner Howe.

In view of the above, I would respectfully suggest that the final proposed regulations expressly prohibit recipients of Federal funding pursuant to P.L. 95-561 from using such funds in any way to support any program using so-called "basic skills" or minimum competency test results as a requirement for a high school diploma.

Okay, we were wondering if, for staff, if there will be any attempt to consult with the elected representative of the leaders of staff and faculty?

And will there be any staff involvement in preparation of those standards?

Dr. Thomas Burns, Regional Commissioner for Educational Programs - Region 1 - suggested that I write to you about the "limited openness in testing" regulation in Massachusetts Policy on Basic Skills Improvement (1-23-79 Competency Tests)

The regulation is as follows:

40.05 (7) "After an evaluation of a student's achievement of minimum standards each public school district shall give the student

and his or her parents the opportunity to review the evaluation instruments used and the complete record of the student's achievement level. The complete record of a student's achievement level shall include, but not necessarily be limited to, the corrected responses of the student on the evaluation instruments used and shall be maintained as part of the student's temporary record pursuant to the Student Regulations as adopted by the Board of Education."

You will note that the sharing of corrected answers and the test used is carried out under the guidance of a professional educator and does not, in any way, interfere with copyright or security. It is simply offering to parents and students the "right to see" = which belongs. At no time are test booklets given to anyone.

We support Section 162.310 (c) in principle, but not specifically. As written the supplemental aid is for those who "fail the proficiency standards test." The sentence should be rewritten to help those "who are judged by the teachers to need additional aid." We do not think the law was meant to have only one test to be used to make such a decision as to who needs help. A teacher makes a professional decision as to who needs additional help using all the information known about the child.

It is our interpretation that Section 922(a) of P.L. 95-561 and Section 163.13 of the proposed rules are in conflict, as the rules are much more restrictive. We urge you to keep the legislative intent of SEA activities to include testing achievement in the basic skills of children rather than limiting SEA technical assistance to providing information about "different uses and kinds of achievement tests."

Therefore, we recommend that Section 162.13 be changed so the initial sentence reads: "An applicant may propose activities designed to improve their capacity to conduct programs of testing their achievement in the basic skills of children."

My office has recently been made aware of a potentially significant shift of phrasing between the language of the law in Title IX of P.L. 95-561 and the proposed regulations pertaining to that law. It would appear that the introductory language in PL 95-561; Section 922(a) authorizes assistance to state and local agencies "to develop their capacity to conduct programs of testing their achievement in the basic skills of children." It is my understanding that the proposed Title IX regulations restrict applicants to providing information about "different uses and kinds of achievement tests."

I support the recent recommendation communicated to you by Commissioner Robert L. Brunelle of New Hampshire. That suggestion would change the lead sentence of the regulations to read: "An applicant may propose activities designed to improve their capacity to conduct programs of

testing their achievement in the basic skills of children." This may include one or more of the following activities."

It is important that American education be allowed to explore all possible means of finding efficient ways of measuring student achievement. This would certainly include more effective uses of achievement tests, but nothing should be mandated which would discourage the use of objective-based and criterion-referenced instruments. Such instruments may provide assistance in meeting the needs for basic skills of individual students, our most important goal.

Commissioner Brunelle of New Hamphsire has contacted you concerning the phrasing of regulations pertaining to Title IX of PL 95-561.

We believe the intent of Congress was to phrase the law to allow many assessment techniques; however, we agree that the proposed regulations unduly restrict the use of measures for assessment.

Commissioner Brunelle suggests, "An applicant may propose activities designed to improve their capacity to conduct programs of testing their achievement in the basic skills of children. This may include one (or) more of the following activities." Alaska can support this wording; however, we would prefer to substitute the word "increase" for "improve."

We support the inclusion in (a) of "different measures of achievement" rather than simple reliance on the popular concept of testing. We suggest the addition of a subsection (d) which would clearly make remediation an allowable activity.

Although we feel the training on different measures of achievement and their uses addressed in this section essential, a statement should be added which requires SEAs and LEAs to consult with the teacher organization--either the bargaining agent or where one does not exist, the majority organization--in planning any such training programs. This will assure that the training programs are meaningful to and accepted by the instructional staff and therefore will avoid the waste of training monies.

The regulations use the term "different measures of achievement" where the law uses "tests." The regulations, therefore, seem to be broader than the law. In addition, the law says that information on the availability of tests can also be disseminated, an activity which is not covered in the regulations.

Second, the regulations for the Achievement Testing program state that funds may be used to conduct research on measuring achievement and diagnosing instructional needs. In my view, this section goes beyond the law because it does not explain that the purpose of this research, as expressed in the legislation, is to determine improved means of

assessing achievement and of diagnosing instructional needs in the basic skills. In addition, the regulations omit the evaluation component of the program that is contained in the law.

On this point the law says in Section 922, (a) (3): research and evaluation designed to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs.

No mention is made of tests. The Congress seems to be asking for (1) the invention and validation of assessment tools other than paper and pencil instruments and (2) improved ways for the child's teacher to discuss his or her learning needs.

Suggested Change: "Inquiry into assessment techniques other than paper and pencil tests and the validation of promising practices including opportunities for teachers to improve their skills at diagnosing learning needs."

Also, there should be rules which promote coordination with NIE R&D programs on assessment.

Par. 162.311 (c) should be amended to read as follows:

> (c) Conduct research [on] to determine improved means of more accurately measuring achievement and diagnosing instructional needs.
>
> [delete material in brackets] new material underlined

This would make the language consistent with the statute (Sec. 922 (a) (3)). This more precise language would also serve the concerns expressed in both the House and Senate reports as to the limited scope of the Federal role in testing.

This rule is at variance with Sec. 922 which says: "(1) disseminating information to state and local educational agencies on the availability and uses of achievement tests. The term improve is used only once in Sec. 922, and that single use is in no way related to its use in the proposed rule. [Sec. 922, (a), (3) "research and evaluation designed to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs."] A growing body of scientific evidence supports the law and not this proposed rule, i.e., it is not possible to improve either the existing tests or the ways in which they are intended to be used.

Suggested Change: "(b) The Achievement Testing Program (Sec. 922) which provides information, assistance, and cautions about the use of standardized achievement tests."

We also urge a rule that would enable the Commissioner to withhold funds from states that make improper use of such tests (e.g. as the sole criterion of success) as well as improper use of data (e.g. making improper comparisons among schools, classrooms, or individuals) resulting from the use of such tests.

A recipient may conduct activities such as the following:

(d) Conduct research that seeks to identify specific cognitive factors that tend to make girls particularly likely to perform differently on achievement tests especially in the area of mathematics.

We recognize the fact that the Commissioner of Education addresses the issue of comprehensive assessment in dealing with basic skills. His remarks on "discretion in measuring achievement" are certainly a step in the right direction. However, we are distressed to see within the proposed regulations that assessment only focuses on a single test in many instances. That has been the experience at the state levels throughout the entire nation.

The New Jersey Education Association has taken the position that we are in favor of comprehensive assessment. That includes all techniques such as teacher judgment, observation, informal and formal assessment procedures. We feel that the kinds of decisions being asked of school personnel should not be based on one single testing instrument. Medical examinations and local tests are certainly far more accurate in terms of the goals of a local school district than any one test measure that is floated in the state capital. So one would hope when you review proposed changes to the regulations, that real comprehensive assessment is adequately prescribed.

We should be able to -- and I don't know whether this has been covered or not, but one of the main problems we have is getting pay for substitute teachers to replace those who are working on committees to develop our tests. I have a process for developing tests. It is probably -- it's very effective, very inexpensive, but I do need to release teachers from the classrooms occasionally. The money should be available for that.

We need money for such things as printing costs and the use of computers, because I use them a great deal. There shouldn't be an exclusion for something like that. And I would ask -- and this may seem surprising -- but that at least $8.00 per student be, for each student served per year. In other words, I can do this for $8.00 or less per student. That would mean that a program that I have been working on could be served by having a grant of $200,000.00 for 25,000 students for one year.

We would want the ability to use locally developed tests for our own evaluations since that's the very core of our program. It is sort of pointing people toward the bottom line. And when people are directed toward a bottom line that is clear, it's been well defined, it's understood by the public, it would be a shame not to use these instruments that we are developing. In other words, our whole program revolves around the developing of tests and using them as a teaching tool. And that point, I think, should be underscored; that they are not necessarily the final arbiter of a person's faith; they are used as a teaching tool.

There must be a mechanism developed for blocking the use of arbitrary and unvalidated test measures. Further, no single testing criteria should be used in terms of holding a student back from progress into a higher level of education; motivation, teacher, parental, recommendations should also be used.

I have commented at length on the same regulations to Thomas Keyes of the Right to Read office. To be consistent with my comments to him, I must mention that while the regulations don't specify standardized tests in the sections on national and state basic skills plans, they fail to legitimize evaluative means which rest on standardized procedures (e.g. holistic scoring).

The impression that tests per se are dominant becomes substantial in the Section of the regulations titled "Educational Proficiency." The word test appears, of course, in the legislation, but it strikes me that the intended meaning was something like "evaluative instrument or procedure." This would have to be the meaning, for there are no acceptable standardized tests of writing and speaking. It seems to me well within the power of the Commissioner to clarify that meaning in the regulations. As they stand, the regulations clearly specify "achievement tests," and that phrase will inevitably be interpreted as standardized achievement tests.

I'm sorry, therefore, I can't agree that the department has "avoided fostering formal, standardized tests." More explicit language is needed to establish flexibility; without explicit language, proposers will seek funds to develop highly inappropriate instruments for assessing speaking and writing.

To risk being tedious, I repeat: a test of writing or a test of speaking must involve written or spoken communication, and standardized achievement tests of the conventional variety will not do.

We do see hope in Section 162.311, the Achievement Testing Program which, properly conducted, might be the means for further sharpening of standardized procedures, such as holistic scoring, and for sharing information about such procedures widely among applicant districts and

others.

At the same time, we worry about the phrase "achievement testing" which we truly hope encompasses the procedures I've been talking about.

Unfortunately, the phrase "achievement testing," without explanation, risks immediate translation into "standardized achievement testing" of the pencil-and-paper, choose-an-answer variety.

This is precisely not what is needed for proper assessment of speaking and writing.

I believe that a great deal of mischief and waste can be avoided if instruments other than standardized achievement tests are encouraged by this section of the regulations.

Specifically, I commend to you a short regulation in each of the grants that come about and it is a single sentence as follows: "Following the administration of a test, the student and his or her parent shall have the right, upon request, to view the student's corrected responses and the test used."

Let me simply raise the question then to leave with you as to whether or not it might be desirable. In fact, let me make the comment I believe it would be desirable to, if the legislation to be interpreted in this way to include as a category of funding under achievement testing assistance to local systems in developing their own instruments.

My concern in this regard is that programs and projects which have specific learning objectives are at a disadvantage in attempting to borrow tests that are already in existence to measure the achievement of students under those programs. It's very difficult to develop tests locally, but it's almost necessary to do so in order to have a precise measurement. And my feeling is that more and more in the next few years we're going to need assistance to local personnel in the development of valid and reliable achievement tests.

Third, I am concerned about the provision in the regulations making the State coordination procedures for the Basic Skills program applicable to the two programs in Title IX-B. In the law, the Title IX-B programs are completely different and separate from the Title II program, and I find no basis in the statute for this provision.

Here again, we support these selection criteria but feel they should be strengthened by requiring the applicant to "involve teachers" through consultation with the recognized bargaining agent, or where one does not exist, with the organization representing the majority of teachers in that educational system. Inclusion of teachers who are not representative of the majority's views or needs to meet such provisions is a

long-standing practice in many school systems and should not be supported by the federal government. We strongly urge you to make this revision.

Then, finally, the selected criteria in 162.321(b) (2) (iii) which it says--I jotted that down--I don't know how else to do it because I don't have it written out for you, -- where it says transferring the test results into usable information for improving curriculum instructions. We consider that extremely important so that the teachers will be able to use that material, you have 15 points down for that, it was felt that a higher range -- it is just an opinion out of my head -- that 25 points which would be more than any of the other points spread that is on there. We feel it would be important because that't really an important area--teachers using the material and what use it could be put to. If it can be put to use in the classroom then you are going to see results. We feel that it should get more points than

While these criteria seem to be very appropriate for the Proficiency Standards program, they are less appropriate for the Achievement Testing program. Specifically, the criteria for funding Achievement Testing program applicants should most certainly take into account one fundamental purpose of the program, to improve the use of tests and find other means of more accurately assessing achievement. This purpose is not dealt with in these regulations.

For the Proficiency Standards Programs, the specific criteria are:

(iv) The extent to which the applicant seeks to establish standards that are sex-fair and nondiscriminatory.

For the Achievement Testing Program, the specific criteria are:

(iv) The extent to which the applicant presents effective procedures for assuring that achievement tests and testing practices are sex-fair and nondiscriminatory.